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AUDITORS

AUDITORS

THEIR DUTIES AND RESPONSIBILITIES

UNDER THE COMPANIES ACTS, PARTNERSHIP ACTS,
AND ACTS RELATING TO EXECUTORS AND TRUSTEES,
AND TO PRIVATE AUDITS

BY

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ENGLAND AND WALES

TWELFTH EDITION

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PREFACE

TO TWELFTH EDITION

THE reception which has been accorded to this work has necessitated the issue of a Twelfth Edition. The points raised by several of the more recent legal cases which deal with matters that concern the auditor have been included in this new edition, and other additions and alterations have been made in the text where considered necessary, thereby maintaining for the book its reputation as an invaluable work of reference.

F. W. P.

PREFACE

TO ELEVENTH EDITION

SINCE the publication of the tenth Edition several Acts of Parliament of importance to Auditors have been passed. The principal one is the Railway Companies (Accounts and Returns) Act, 1911, which prescribed a new yearly form of Accounts and Returns for Railway Companies in place of half-yearly Accounts and Returns which had been in force since 1868.

In connection with Trustee Savings Banks an Act received the Royal Assent on the 18th April last giving the National Debt Commissioners control over the special investment business of these Banks.

The Finance Act, 1914, altered the scale of Rates of Estate Duty, and the Licensing (Consolidation) Act, 1910, altered the scale of Maximum Charges for Compensation Levy, and also the scale of deductions in respect of the Levy.

The Sections of the above Acts relating to Auditors and to Accounts will be found in their proper place as also the Sections of other Acts included in the work for the first time, such as the War Charities Act, 1916; and the War Loan (Trustees) Act, 1915.

A new Chapter has been added to this edition entitled "The Detail Work of an Audit." This it is hoped will be found useful not only by Articled Clerks but also by the young practitioner and the managing clerks who are instructed by Auditors to carry out the details of Audits and supervise junior clerks in the checking of the books of account.

A number of important additions, including legal decisions, have been added to the text of this Edition which it is hoped will be found useful not only to the Students of the Accountancy profession but also to the practitioners in the professions of Law and Accountancy.

F. W. P.

LONDON,
5th July, 1918

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AUDITORS

CHAPTER I

INTRODUCTORY

ANTIQUITY of the Office of Auditor—Auditors of the Crown—History of Statutory Law relating to Joint Stock Companies—Assurance Companies—Building and other Societies—General Management of Companies in hands of the Directors—Periodical Meetings of the Shareholders—Statement of Accounts laid before these Meetings—Accounts previously audited by Representative of the Shareholders—Known as the Auditor—Position of Auditor as regards Directors—To what extent Auditors Agents of the Shareholders—Secret Information—Responsibility in connection with issue of Prospectus—Responsibility under the Companies (Consolidation) Act, 1908—Auditor as Officer of a Company—Auditors of Accounts of Universities and Colleges—Of Boards of Conservators—Of County Associations (Territorial and Reserve Forces Act)—Of Judicial Trustees—Of Charities—Of Merchants—Of Executors and Trustees—Of Landed Proprietors and Private Persons—Auditor appointed Administrator—Auditor as Assessor.

THE office of Auditor is one of high antiquity, and the date of its origin is difficult, if not impossible, to arrive at.

It has certainly existed for six centuries, as in
Antiquity of Auditors. 1299 there is mention of an Auditor of the

Accounts of the Corporation of the City of London. On the 24th March, 1324, Master John de Pykesleye and two others were appointed “to demand, audit, and take all accounts of those who are or will be held to render them in the counties of Oxford, Berks, Southampton, Wilts, Somersetshire, and Dorset; and to do and determine all things which the King’s auditors of accounts should do.” In Langland’s *Vision of Piers Plowman*, published in 1377, we find the following line, “Of my reue to take Al that myne auditour, or elles my stuarde Conseilleth me by her acounte”; and in Paston’s *Letters*, 631, II, 388, in 1469, “Send downe . . . to some awdyter, to take acomptys of Dawbney’s byllys.” In 1557, *Ord. Hospitalls*, B. IV, b,

occurs, "There shall also be chosen Auditors generall of the Accomptys."

Shakespeare, in *Timon of Athens*, puts into
'Shakespeare. the mouth of Flavius the steward—

If you suspect my husbandry, or falsehood,
Call me before the exactest Auditors,
And set me on the proof.

The first record of Auditors in Dublin is in the year 1452, and it would seem that the powers of the Auditor of those days even exceeded those of the Local Government Auditors of the present time. The surcharge of these Auditors has to be sued for in the ordinary way; while we read that in 1599, upon the Auditors of Dublin reporting two citizens (*videlicet* Master Nicholas Umfrey and Master Michael Pentney) to be indebted to the city in the sum of six score eight pounds, eleven shillings, seven pence (cxxviii^l xjs vij^d), it was ordered "by the authority of this post assembly . . . if they do not deliver the said silver pawns accordingly that then the said Master Umfrey and Master Pentney shall yield their bodies to the gaol of Tholsell within this city, and there shall remain to time they do pay and satisfy the said sum of six score eight pounds, eleven shillings, seven pence, or deliver into the Treasury of this city sufficient silver pawns for the same sum."

In Sir Walter of Henley's *Tretyce off Housbandry*, a Manuscript of the thirteenth century, which has been printed by the Royal Historical Society, occurs the following sentence in the Chapter "The Office of Seneschal"—

Thirteenth
Century
views on
Auditors.

"The Auditors ought to be faithful and prudent, knowing their business, and all the points and articles of the account in rents, in outlays, and in returns of the grange and stock and other things belonging thereto. And the accounts ought to be heard at each manor, and then one can know the profit and loss. . . . The Seneschal ought to be joined with the Auditors, not as head or companion of the account, but as subordinate, for he must answer to the Auditors on the account for his doings, and for his commandments and approvments done by him on the manors. . . .

It is not necessary so to speak to the Auditors about making audit, because of their office, for they ought to be so prudent, and so faithful, and so knowing in their business, that they have no need of other teaching about things connected with the account."

In July, 1645, Archibald Sydserfe presented a petition to the Scottish Parliament, which is referred to as follows in the Acts of the Parliaments of Scotland: "Archibald Sydserfe humblie desyred the Estates of parliament That they would appoynt some auditoures for heiring and Fitting of his accomptes of these moneyes received be him for the publick use W^{ch} the Estates of parliament takeing to their consideratione Findes it fitting that the committie for the moneyes shall appoynt the saides Auditors."

Notwithstanding the fact that the word "Auditor" is always pronounced with the "i" short, there can be no doubt

that it is derived from the Latin "Auditor,"
Etymology. the ancient practice being for the parties whose accounts were to be audited to attend before the Auditor and vouch them orally, an example of which is given in the paragraph just quoted, the "accounts ought to be *heard* at each manor."

Prior to Queen Elizabeth's reign, the Accounts of the Crown were examined by Auditors specially constituted for the purpose, or by the Auditors of the Land

Auditors of the Crown. Revenue; or at times by the Auditor of the Exchequer, which office, the most ancient of all offices of control, was established in 1314, and continued until 1834, when it was abolished, and a new Department created, termed the Exchequer Office, or the Office of Comptroller-General of the Exchequer.

In 1559, the second year of the reign of Queen Elizabeth, two Auditors of the Imprests were first appointed. They continued in existence until the year 1785,

Auditors of the Imprests. when they were abolished, and their revised duties were taken up by the Office for auditing the Public Accounts. The Auditors of the Imprests were paid by fees chargeable on the accounts they examined. These

were at established rates, but were sometimes increased by the Lord High Treasurer, on a memorial from the Auditors that the accounts were more voluminous than they had formerly been, or by a voluntary grant from the Lord High Treasurer, "for the pains" which the Auditors had been at in making up particular accounts.

The Accounts of the Treasurer of the Navy appear to have occasioned the first memorial from the Auditors for an increased allowance; this was in 1630. The **Naval Accounts.** two Auditors of the Imprests, as originally appointed, had no power to call upon parties to render Accounts, but were dependent on the Treasury for obtaining them.

In 1649 the Auditors were empowered by the Committee of Public Revenue, sitting at Westminster, to call before them all such persons as had received any moneys upon Imprest or otherwise, to pass their accounts according to the usual course of the Exchequer. The same Committee abolished fees, and the two Auditors were allowed a fixed salary of £500 a year each "for themselves and their clerks, including all charges for house rent, pens, ink, paper, parchment, and all other incident expenses."

With the Restoration of Charles II, the two Auditors returned to the former system of payment by fees and dependence on the Treasury, a practice which **Auditors under Charles II.** remained in force till the abolition of their duties in 1785. In 1783, owing to the increase in the Accounts, the Principals each obtained upwards of £16,000. The retired allowance to each Auditor on the abolition of the office was £7,000 a year. Each Auditor had his Deputy and staff of six or seven clerks.

As an example of the scale of remuneration to the Auditors of the Imprests, the Account of the Chief Cashier of the Bank of England may be quoted, for the Audit of which £100 was allowed for every million of Capital Stock managed by that Company. The fees paid for auditing the Bank Account for the year 1784 exceeded £20,000.

The first attempt by the House of Commons to establish

a control over the grants of Parliament, and to check the appropriation of supplies, was made in 1667, when it was determined by the House that the money voted for the Dutch War should be *applied only to the purposes of the War*. Commissioners for this purpose were appointed by "An Act for taking the Accompts"; and this may be considered as the first establishment of a Parliamentary Audit, or, in other words, of an Audit to a certain extent independent of the Government.

In 1785, on the abolition of the office of Auditors of the Imprests, its revised duties were taken up by the Office for Auditing Public Accounts. Various other officials for the auditing of the Accounts of Government Departments were from time to time appointed.

The first step was taken towards the establishment of a system of Account, based upon more practical principles, on the occasion of the revision of the Naval Accounts in 1832, when the books in which the details of the Naval expenditure are recorded were recast on a connected plan on the principle of Double Entry.

From a Treasury Minute, dated 16th June, 1848, it appears there were about 350 Public Accountants rendering Accounts to the Commissioners of Audit, and the Treasury complained of the delay, in many cases, in presenting these Accounts. The following sentence is worth recording, as being applicable to all audits—

"My Lords do not understand on what grounds so much delay can have occurred in rendering these Accounts, it being the first duty of an Accountant to submit for audit, in a regular and punctual manner, his Account of the expenditure of the public money entrusted to him; and if this rule is not strictly enforced, the great advantage of an audit is lost, and it becomes impossible to exercise by means of it an effectual check over the public expenditure."

On the 28th June, 1866, the Exchequer and Audit Departments Act, 1866, received the Royal Assent, which

consolidated the previously independent Offices of the Comptroller-General of the Exchequer and of the Commissioners of Audit, and placed them under an Officer, entitled the "Comptroller-General of the Receipt and Issue of Her Majesty's Exchequer and Auditor-General of Public Accounts" (29 & 30 Vict., cap. 39).

Exchequer
and Audit
Department
created.

The Comptroller and Auditor-General is the guardian of the public purse, and in the exercise of this control his functions are broadly dual—

1. As Comptroller of the Exchequer it is his duty to see that all public moneys payable to the Exchequer are duly received and accounted for. On the other hand, no issues of money from the Exchequer can be made without his order, which is granted to the Treasury for the supplies voted by the House of Commons.

2. As Auditor-General it is his duty, as succinctly defined by the Exchequer and Audit Departments Act, "to ascertain, first, whether the payments which the Accounting Department has charged to the grant are supported by vouchers or proofs of payment, and, second, whether the money expended has been applied to the purpose or purposes for which such grant was intended to provide."

A general supervision is reserved to the Treasury, which has the power to require the Comptroller and Auditor-General to ascertain that the expenditure has been supported by their authority, and to report to them any expenditure which has been incurred without such authority. The right of appeal to the Treasury is also secured to any Accountant who may be dissatisfied with any disallowance which has been made in his Accounts by the Comptroller and Auditor-General. On the completion of the examination of the Accounts for the financial year, the Comptroller reports to the House of Commons on each of the Accounts submitted to him, and his criticisms are considered by certain members of the House who constitute the Public Accounts Committee.

With the duties of the Officials of His Majesty's Exchequer and Audit Department this work, however, is not concerned ;

like those of other servants of the Crown, the duties are prescribed by Acts of Parliament and by Rules and Regulations issued from time to time by the Authorities.

It is evident from the above remarks that the term "Public Accountant" was formerly applied to those Government officials who had to account to the Treasury for the manner in which they had expended public revenue entrusted to them. Towards the close of the 18th century, however, mercantile men and others who were unable, either by themselves or their clerks, to keep their books of account, or even, if the books were properly kept, to prepare statements from them, found it to their advantage to seek the aid of expert book-keepers, who were able to devote to this occupation some of their leisure time. In this way arose the growth and development of professional accountancy, the practising members of which were styled Public Accountants.

The leading members practising in Scotland were successful in obtaining grants of Royal Charters, those practising in Edinburgh receiving one in 1854, followed by Glasgow in 1855, and Aberdeen in 1867, the members of which Societies, incorporated by these Charters, have since been known as "Chartered Accountants."

No similar steps appear to have been taken in England until, in 1870, an Institute of practising professional Accountants was formed, which Institute was successful in obtaining a Royal Charter on the 11th May, 1880.

In 1885 a Society was formed by professional and other Accountants who were not eligible for membership of the Institute of Chartered Accountants. The Society was registered under the Companies Act, 1862, as the "Society of Accountants and Auditors," and its members are known as "Incorporated Accountants."

Since the grant of the Royal Charter to the Institutes the shareholders of Public Companies have gradually ceased to appoint, from their body, Auditors of their Accounts, and have replaced the amateur Auditor by the Chartered or Incorporated Accountant.

The vast sums of money embarked in Joint Stock enterprise in Great Britain has caused the position of those who audit the Accounts of such enterprises to assume great importance, and the responsibility attached to the post of Auditor of a Public Company is, consequently, exceedingly heavy.

Since the 2nd day of November, 1862, the day on which the Companies Act, 1862, came into operation, there has been a marked increase in the number of Associations formed for enabling persons of all classes, trades, and denominations to combine together for the purpose of carrying on to their mutual advantage a single trade or any enterprise for the development of which the joint stock principle, as amended by that Act, offered increased facilities.

Increase of
Joint Stock
Companies
since 2nd
November,
1862.

For a considerable time previous to the passing of this Act these Associations had been in existence, but until 1844 they were subject to the law which governed ordinary partnerships of two or three persons, and the promoters of Railway and other Companies had the entire charge of their undertakings, made contracts with landowners and others, and issued prospectuses, on the faith of which subscriptions were received and certificates of shares issued without interference or control on the part of the Legislature.

The first Joint Stock Companies Act (called the Joint Stock Companies Registration Act) was passed in 1844, and it remained in force until 1856, when it was repealed, except with regard to Insurance Companies, for which Companies it remained in force until the Companies Act, 1862, came into operation.

Joint Stock
Companies
Registration
Act, 1844.

The first Act of Parliament making limited liability attainable by Joint Stock Companies was passed in 1855, but this was not brought forward as an independent measure, and was in fact, merely a graft on the Act of 1844.

In 1856, however, Mr. Robert Lowe (afterwards Lord Sherbrooke), who was at that time the Vice-President of the

Board of Trade, brought into the House of Commons the Joint Stock Companies Act, 1856, which repealed the previous Acts referred to, and reduced their provisions into a practical system. In 1857 and 1858 four additional Acts were passed, and in order to consolidate the Acts relating to Joint Stock Companies Lord Chelmsford brought a fresh one in twice in 1859, but it did not pass, neither was Lord Campbell more successful in 1860. In 1862, however, the Act, which remained in force for forty-six years, and which gave so great an impetus to Joint Stock enterprise, was passed.

No provision, however, was made in this Act for the audit of Accounts, although a schedule was attached, which was applicable to Companies registered without Articles of Association, containing regulations as to audit for those particular Companies only.

The omission of all reference in the Act of 1862 to the presentation of Accounts to the Shareholders, and their previous audit, is most extraordinary, when eighteen years previous it was evidently considered that legislation on this subject was desirable. In an Act entitled "An Act for the Registration, Incorporation, and Regulation of Joint Stock Companies," which received the Royal Assent on 5th September, 1844, very full clauses were inserted, providing for the proper keeping of Accounts, the balancing of the books, the preparation of a Balance Sheet, the audit of the same, and the reporting thereon by the Auditors, and it further enacted that a printed copy of the Balance Sheet and of the Auditors' Report should be sent ten days before the annual meeting to every shareholder and be filed, fourteen days after the meeting, with the Registrar of Joint Stock Companies.

Several Acts were subsequently passed which were supplemental to the Act of 1862, the first Act of importance to Chartered Accountants being the Act of 1879, which enacted that the Accounts of every Banking Company registered after the passing of the Act should be examined by an Auditor,

and when within the following years many of the leading Joint Stock Banks registered under this Act, they took the opportunity of displacing the shareholder-auditor and elected Chartered Accountants to the office.

The Companies Act, 1900, enacted, for the first time since the Act of 1844, that every Company should have at least one Auditor, and prescribed his mode of appointment, and to a limited extent his rights and duties.

An entirely new provision was introduced into this Act, by which, seven days before the statutory meeting of a new Company, the Directors were required to send a report to each shareholder, which report, so far as it related to the shares allotted by the Company, and to the cash received in respect of such shares, and to the receipts and payments of the Company on capital account, had to be certified as correct by the Auditors, if any were appointed. This provision has been repeated in the Act now in force.

In 1907 a further Act, supplemental to the Act of 1862, was passed, which contained some important sections relating to Auditors and their duties, and a short Act was also passed early in 1908.

As a result of this legislation, the law relating to limited liability Companies had to be found in the Act of 1862 and such a number of subsidiary Acts as to be of great inconvenience, both to professional men and the public, and on the 21st December, 1908, an Act was passed repealing the Act of 1862, the subsidiary Acts referred to, and certain sections in a number of other Acts which applied to Companies, and incorporating all the provisions of such sections of the Act of 1862 and the subsequent Acts which were in force, in one Act.

This Act is intituled "The Companies (Consolidation) Act, 1908," and its provisions apply to all Companies registered under the Companies Acts, 1862 to 1908, and to Companies since registered under this Act.

The Assurance Companies Act, 1909, which enacts that the Accounts of all Assurance Companies shall be deposited

annually with the Board of Trade, also enacts that where the Accounts of an Assurance Company carrying on assurance

Assurance Companies Act, 1909. business of all or any of the following classes :
(a) Life Assurance, (b) Fire Insurance, (c) Accident Insurance, (d) Employers' Liability

Insurance, (e) Bond Investment Business, are not subject to audit in accordance with the provisions of the Companies (Consolidation) Act, 1908, or the Companies Clauses Consolidation Act, 1845, relating to audit, they shall be audited annually in such manner as the Board of Trade may prescribe, and the regulations made for the purpose may apply to any such Company the provisions of the Companies (Consolidation) Act, 1908, relating to audit, subject to such adaptations and modifications as may appear necessary or expedient.

In addition to the Companies registered under the Acts of 1862 to 1908, the Companies (Consolidation) Act, 1908,

Companies incorporated by special Acts. and the Assurance Companies Act, 1909, there are those registered under various other public Acts (including Railway Companies, Gas and Water Companies, Building Societies, Friendly and Industrial and Provident Societies, and Savings Banks), as also those incorporated by special Acts of Parliament. The latter are, naturally, subject to certain public Acts in addition to their own private ones.

There are many Companies, in Devon and Cornwall, formed for the purpose of owning and working mines. These Com-

Mining Companies in the Stannaries. panies were formerly amenable to the Court of the Vice-Warden of the Stannaries, for the purpose of common law, in matters relating to miners and mines ; but this Court was abolished on the 1st January, 1897, and its jurisdiction and powers were transferred to the various County Courts. The working of the Stannary laws as now existing constitute, as regards mines, what is known as the Cost Book principle.

This system allows any number of persons to be partners or shareholders in a Mine. The adventure is registered under a Cost Book of, say, 512 shares, the favourite division being 8 or multiples of 8, though there is no definite rule, and a

shareholder may hold one or any greater number, which he can dispose of without the consent of his brother shareholders. Should he so desire, he can at any time determine his liability by relinquishing his share and paying such proportion of any debts then existing up to that date, the amount being ascertained by valuers.

The Acts of Parliament now in force relating to these Companies are The Stannaries Act, 1869 (32 & 33 Vict., c. 19), and The Stannaries Act, 1887 (50 & 51 Vict., c. 43), the sections of which referring to the Accounts and Audit thereof will be found in Chapter III.

The first Building Society was founded in 1809, and was followed by many others. Previously to 1836, however, no special legislation existed for them, and they were considered ordinary Joint Stock Companies. About this time a proposal was made by the Chancellor of the Exchequer to charge a duty on shares in Joint Stock Companies which were transferable. This alarmed the Building Societies, who protested so successfully against the proposed duty being applied to them that an Act was passed for their regulation, and although this Act was described by the Royal Commissioners as "one of the worst drawn which yet remain in the Statute-book," it remained in force for nearly forty years.

In 1874, the Building Societies Act, 1874 (37 & 38 Vict., c. 42), was passed, under which most of the Building Societies now in existence are incorporated; but as it does not affect Societies registered under the Act of 1836 unless they become incorporated under the new Act, the provisions of the Act of 1874 do not apply to all Building Societies. The Act of 1836 is, however, by the Building Societies Act, 1894 (57 & 58 Vict., c. 47), repealed from the 25th August, 1896, as to Societies certified thereunder after 1856.

The Act of 1894 prescribed that a Form of Accounts should be prepared by the Chief Registrar of Friendly Societies for use by Building Societies, and contain certain information; it also enacted that one of the Auditors of each Society shall be a person who publicly carries on the business of an Accountant.

In the Reports of the Chief Registrar of Friendly Societies for the year ending 31st December, 1894, presented to Parliament, that official states that a number of questions have been addressed to him as to who fulfils this requirement of the Act. In the opinion of the Registrar, a person who publicly carries on the business of an Accountant is one "who could, if required, under Section 21 of the Act, append to his signature as Auditor a statement that he is a person who publicly carries on, at some specified place, the business of an Accountant, and would be subject to the penalty provided by Section 22 of the Act if the statement should be proved to be false," and further, he adds, "It would seem that the turning-point of the definition in the Act lies in the word 'publicly,' and, therefore, that many men who possess excellent credentials as Accountants in private employ, or in positions where the public cannot come to them and give their accountancy work to, are not within it. To put the matter in familiar terms, the essential part of the qualification is a brass plate or other public notification that the business of an Accountant is carried on."

On the 11th July, 1817, was passed an Act for the purpose of encouraging the establishment of Banks for Savings in Ireland, and on the following day a similar **Savings Banks.** Act was passed for the encouragement of Savings Banks in England, which Act was amended in the following year. Savings Banks were first legally recognized in Scotland in 1819 by the Act 59 Geo. III, c. 62.

The Act 1 Geo. IV, c. 83, altered the procedure of dealing with the funds of Savings Banks as an investment with the Commissioners for the Reduction of the National Debt at the Bank of England, and prescribed that receipts bearing interest at 3d. per cent per diem were to be given for moneys invested.

Under the Acts 5 Geo. IV, c. 62, and 9 Geo. IV, c. 92, the state of the law relative to Trustee Savings Banks began to assume its present form, and the former of these Acts of Parliament was the earliest Statute dealing with Banks in both England and Ireland,

Several Acts were passed in the reign of William IV, and an Act was passed in 1844 which, amongst other amendments of the law, prescribed that Auditors were to be appointed, and certain duties to be performed by them were specified. The depositors' Pass Books were to contain a copy of the rules, which rules were to provide for the production of Pass Books for the purpose of their being inspected, examined, and verified. Acts were passed in 1854, 1859, and 1860, and in 1861 Post Office Savings Banks were first established.

In 1863 so many Acts were in force relating to Savings Banks that a new Act was passed, known as the Trustee Savings Banks Act of 1863, which repealed, so far as Trustee Savings Banks were concerned, all previous Savings Bank legislation, with the exception of the provisions contained in 24 Vict., c. 14, and 26 Vict., c. 14, and set forth in one measure the statutory enactments relating to Trustee Savings Banks. This is still the chief Act of Parliament controlling the conduct and management of this class of Savings Banks. By this Act it was provided that a public Accountant or one or more Auditors was to be appointed by the Trustees and Managers, but not out of their own body, to examine the books of the Bank and to report in writing to the Board or Committee of Management the result of such audit not less than once in every half-year; also to examine an extracted list of the depositors' balances, made up every year to the 20th November, and to certify as to the correct amount of liabilities and assets of the Bank. It also prescribed that a book containing such extracted list of every depositor's balance, omitting the name, but giving the distinctive number and separate amount of each, and showing the correct number and amount of the whole, checked and certified by such public Accountant or Auditors, should be open, at any time during the hours of public business, for the inspection of every depositor in relation to his own account. A further Act was passed in 1880, and another one in 1887; and in 1891 was passed the Act for the establishment of an Inspection

Acts of 1880,
1887, and 1891.

Committee of Trustee Savings Banks, which, in addition to giving certain powers to this Committee, also prescribed that if, in the opinion of the Committee, the rules of a Savings Bank are insufficient for the purpose of maintaining an efficient audit, the Bank shall with all convenient speed make such additional rules as may, in the opinion of the Committee, be required for the purpose.

A number of Societies formed to encourage thrift are registered under the Friendly Societies Act, 1896, and supplementary Acts, and are required by Section 26 of this Act to submit their Accounts once at least in every year to one of the Public Auditors appointed by the Treasury, or to two or more Auditors appointed by the Society or each of its Branches for the audit of the Accounts of each Branch.

The majority of Companies now in existence are registered under the Companies Acts, 1862 to 1907, since repealed, as already explained, and now governed by the Companies Acts, 1908 to 1917. These Associations, known generally under the name of Limited Companies (although the Act of 1862 provided for the incorporation and management of unlimited companies), have invaded almost every department of commerce and trade, and the capital embarked in these undertakings is enormous.

All classes of persons who have either inherited or acquired means, even the artisan who out of his wages has saved a few pounds, are interested more or less in the management and welfare of these Associations, and every person holding a share is consequently a partner in each one in which he is a shareholder.

As, however, it would be impossible for each of the partners in these undertakings, as well as in those Companies registered under other Acts of Parliament, and in Building, Friendly, and other Societies, to have a voice in the general management of the business, in the same manner as have the partners in a private firm, it is the practice to delegate this power to a few (varying according to the size

and the nature of the business of the Company or Society) of their number, now generally styled Directors. These Directors undertake the superintendence and the administration of the affairs of the Company or Society on behalf of themselves and of their co-partners.

The Directors have periodically to meet the general body of Members for the purpose of accounting to them the manner in which they have fulfilled their duties. If these have been performed to the satisfaction of the Members, they usually continue the Directors in their position. Should, however, the former be dissatisfied with their representatives, they elect others out of their body to take the place of those Directors who retire by rotation, it being the custom for about a third or a quarter of the Board to vacate their seats annually, in order to give the Members the opportunity of introducing fresh representatives should they consider a change in the administration desirable.

The Meetings of the Members are almost invariably held yearly or half-yearly, previous to which Accounts are prepared showing the financial result of the transactions of the Company or Society since the previous meeting (or, if the Company or Society be a new one, since its incorporation), which Accounts are, as a rule, printed and sent to all the Members, in conjunction with a Report of the Directors and a notice convening the meeting.

The Members have, therefore, the opportunity of ascertaining what has been the result of the transactions of their undertaking since its incorporation, or their last meeting, and of considering, before they are brought together, what steps if any, they shall take at the meeting, supposing the facts as disclosed by the Accounts, and the report of the Directors, are not satisfactory.

As it would be impossible in many instances, and very inconvenient in all, for each partner to examine these Statements of Accounts with the Books kept at the offices of the Company or Society, and frequently elsewhere, their

correctness is usually certified by their representative or representatives, elected annually, for the purpose of ascertaining that the funds of the Company or Society have been properly accounted for, that such of them as have been expended have been applied in the manner indicated in the Accounts, that the unexpended portion is invested as stated in the Accounts, and generally that, in their opinion, the Accounts, as put forward by the Directors for adoption by their co-partners, are accurate in every respect, and to be relied on as showing the result of their management and the true position of their Company or Society, as set forth in the Balance Sheet.

**Accounts
previously
examined by
Representative
of the
Members.**

This representative of the members is known as the "Auditor," and the principal object of this treatise is to point out the duties and responsibilities of those who have to investigate the books and affairs of a Company or Society, before the Accounts, as prepared by the Directors, are placed before the Members at their periodical meetings for their approval, confirmation, and adoption.

**Known as
the Auditor.**

It is evident that the duties of an Auditor are not only onerous and responsible, but frequently intricate, and at times even disagreeable. It may happen that he differs from the Directors as to the manner in which the Accounts shall be stated, or as to other matters connected with his office. As the representative of the members, his principal obligation is, naturally, to have regard to their interests, and though he may be accused by the Directors of interfering with what they may consider their own particular duties, he should not allow their arguments to persuade him when he feels sure his suggested alterations, so far as they relate to the particular duties entrusted to him by law, would, if carried out, be beneficial to the general body of the shareholders.

**Position of
the Auditor
as regards
the Directors.**

As a rule, however, Directors are men of honour and integrity, and when this is the case an Auditor will find his occupation easy and pleasant to perform. He will obtain

ready access to all books, documents, and securities, and every facility will be afforded him in the prosecution of his audit. Any questions he may ask will be immediately and satisfactorily answered, and any suggestions he may make for an alteration in the mode of keeping the books, or in the Accounts submitted to him for confirmation, will be carefully considered, and, if approved, as being likely to prove advantageous on adoption, will be directed to be carried out.

Usually on
good terms
with them.

If, on the other hand, the Directors have neglected their duties or have intentionally prepared false Accounts to be laid before the Members, the Auditor has not only a very responsible, but also a very unpleasant and difficult, task before him. Every possible obstacle is thrown in his way to prevent his discovering and exposing their intended deceptions; but the Auditor should be firm, should require all his questions answered, and each unsatisfactory item explained before he affixes his Certificate to the Accounts.

Except when
they have
neglected
their duty.

He should not allow himself to be tired out and hurried into signing them before he is thoroughly satisfied they are absolutely and entirely correct. The Directors are in his power if he be firm, as, in the case of Companies regulated by the Companies Acts, 1908 to 1917, he is required to state in his report to the shareholders whether or not he has obtained all the information and explanations he has required, and in any case they would be placed in an embarrassing position if they attempted to face the meeting of the shareholders without the Auditor's Certificate.

At the same time an Auditor must remember that it is no part of his duty to interfere in the management, which is entrusted solely to the Directors. His duty is strictly confined to ascertaining that the results of their management are correctly laid before the shareholders to the best of his knowledge and belief. It is possible he may not be satisfied in his own mind that a value put upon an asset is not excessive, and that he would not himself purchase it at that price—that would not be any justification for his expressing this unfortified

opinion in his Certificate or Report. Should he do so, he might prevent the estimate of the Directors being ultimately realized, and thus injure his own clients, the shareholders.

A very grave responsibility would lie upon an Auditor who, in opposition to the unanimous views of the Directors and Managers of a Bank, might venture to throw doubt on the value of its assets and the sufficiency of its reserve ; a run on the Bank and the consequent destruction of the goodwill might very probably be the result of his action.

The shareholders of a Company may, therefore, be said to have two representatives of their interests, the one administrative, as represented by the Directors, the other critical, in the person of their Auditor. **Shareholders have two Representatives.** The latter is practically a check on the former, and frequently prevents the Directors from acting impulsively or recklessly, they knowing their transactions will ultimately be reviewed calmly and impartially by the Auditor, who will communicate the result of his investigation and criticism to the shareholders, to be acted upon by them as they may think proper at their meeting. It is apparent, therefore, as before stated, that the Auditor has it in his power to render great and important services to the shareholders.

As to how far the Auditors are the agents of the shareholders, Turner, L.J., said, with respect to fraudulent representations made by the Directors of a Company as to its position, " There were Auditors of this Company appointed by the shareholders. **Auditors as Agents of the Shareholders.** These Auditors were within the scope of their duty, at least as much the agents of the shareholders as the Directors were, and the false and fraudulent representations were discoverable by them."—*Nicol's Case*, 3 De G. & J. 387, 441.

Lord Chelmsford, however, expressed a doubt whether the learned Lord Justice was correct in treating the Auditors in that case as the agents of the shareholders, or in holding that in the exercise of their duty they would necessarily have discovered the fraudulent representations of the Directors, and continued, " It seems to me that it would be an unreasonable conclusion, from this mode of appointment of these officers,

that they were thereby constituted agents so as to conclude the shareholders by their knowledge of any unauthorized acts of the directors. It would be no part of their office to inquire into the validity of any transaction appearing in the accounts of the company the duty prescribed for the auditors is to inspect, examine, and check the receipts, payments, vouchers, and accounts of the company,"—*Spackman v. Evans*, L.R., 3 H.L. 236.

In the same case Lord Cranworth stated (p. 196)—“ It was said that all the facts must have been known to the auditors, and that they, being appointed by the shareholders, must be treated as their agents. The auditors may be agents of the shareholders so far as relates to the audit of the accounts. For the purposes of the audit, the auditors will bind the shareholders.”

It is the duty of an Auditor to keep secret information he may acquire in the performance of his duties. Although the following case does not exactly point this out it is of interest.

The plaintiff, who had lent money to a certain company, being asked for a further advance, employed the defendant, a chartered accountant, to look into the affairs of the company. In a letter of instructions to the defendant the plaintiff inserted libellous statements concerning the former manager and an auditor of the Company. The defendant handed the letter to his partner, who negligently left it at the Company's office. The manager found it, read it, and communicated its contents to the two persons defamed, who sued the plaintiff for libel and recovered damages against him, the jury in each case finding that the writer of the letter was actuated by malice.

**Secret
Information.**

The plaintiff then sued the defendant for breach and implied duty to keep secret the letter of instructions. The jury having found that it was the duty of the defendant to keep the letter secret, that he had neglected this duty, and that the actions of libel and the damages recovered therein were the natural consequence of his negligence—

Held, by the Court (Bankes, Warrington, and Scrutton,

L.JJ.), that it was the duty of the defendant to keep secret the contents of the letter.

Judgment of Darling, J. [1918] 2. K.B. 742, reversed on this point.

Held, by Bankes and Warrington, L.JJ. (Scrutton, L.J., dissenting), that the plaintiff could recover nominal damages and no more for the breach of this duty, any further damages being in the nature of an indemnity for the consequences of his own wilful wrong.

Judgment of Darling, J., affirmed on this point.

By Scrutton, L.J., that the plaintiff was entitled to substantial damages.—*Weld-Blundell v. Stephens* [1919], 1 K.B. 520.

An Auditor appointed by the Local Government Board under the Public Health Acts to audit the Accounts of a Metropolitan Borough Council, is authorized and required by that Act to decide whether any member or official of the Council has been guilty of negligence or misconduct in relation to the Accounts whereby a loss has been incurred by the Council, and to assess the amount of the loss. The Auditor of a Company does not possess such powers, but it is open to shareholders to take legal steps against the Directors as a result of the Auditor's report in connection with the periodical accounts issued to the shareholders, and it may be useful to quote the remarks of the late Lord Moulton, when L.J., referring to the powers of an Auditor of the Local Government Board, as it may be deduced from this judgment that the persons accounting to the Auditor of a Company are the Directors, and it is not the duty of the Auditor to inquire into the negligence or misconduct of an official which he may encounter during the course of his audit. He may make a report to the Directors, leaving them to deal with the offending official.

The following is the case referred to—

On an application for a *certiorari* under Section 247, Subsection 8 of the Public Health Act, 1875, to remove and quash disallowances and surcharges made by an Auditor acting in pursuance of that section, the jurisdiction of the

Court is not confined to error in point of law, but extends to error in point of fact.

So *held* by the Court of Appeal affirming the decision of the Divisional Court [1907], 2 K.B. 878.

Reg. v. Haslehurst (1887), 51 J.P. 645, followed and approved.

Per Cozens-Hardy, M.R., and Farwell, L.J. An Auditor appointed by the Local Government Board under Section 247 of the Public Health Act, 1875, to audit the accounts of a Metropolitan Borough Council is authorized and required by Sub-section 7 to decide whether any member or officer of the Council has been guilty of negligence or misconduct in relation to the accounts whereby loss has been occasioned to the Council, and to assess the amount of the loss.

Per Fletcher Moulton, L.J. The powers and duties of the Auditor under Sub-section 7 of Section 247 are strictly confined to auditing, and the words "person accounting" in the latter part of that Sub-section, which requires the Auditor to "charge against any person accounting the amount of any deficiency or loss incurred by the negligence or misconduct of that person," mean the person who brings in accounts for audit. Therefore, where the accounts submitted for audit are the accounts of a Metropolitan Borough Council, the person accounting is the Council, and the Auditor has no power to inquire into the negligence or misconduct of the individual members or servants of the Council.

The King v. Carson Roberts [1908], 1 K.B. 407.

Until the passing of the Directors' Liability Act, 1890, it was never considered that Chartered Accountants or others

Directors' Liability Act, 1890. who allowed their names to appear on the prospectuses of new Companies as Auditors incurred any liability by reason of untrue statements in the prospectus. Section 3, Sub-section (1), of that Act, which is practically the same as Section 84, Sub-section (1), of the Companies (Consolidation) Act, 1908, however, threw responsibility on persons who authorized the issue of a prospectus, and consequently, as Chartered Accountants are frequently in the course of their practice brought into connection with the prospectus of an intended company, it was

suggested that their professional employment might bring them within the category of persons who have authorized the issue of a prospectus.

-The Council of the Institute of Chartered Accountants, deeming the matter of the greatest importance, submitted a very full case to Counsel, who gave their opinion that a Chartered Accountant could only be liable under the Directors' Liability Act, 1890, if he so conducted himself as to become a promoter, or to authorize the issue of a prospectus or notice inviting subscriptions. Counsel also gave as their opinion that a Chartered Accountant did not authorize the issue of a prospectus or notice within the meaning of the Act by merely permitting his name to be mentioned in the prospectus or notice as Auditor; or by merely permitting a professional report made by him to be referred to in it; or by merely preparing or advising upon it, or assisting in its preparation professionally.

Under the Companies (Consolidation) Act, 1908, it is prescribed by Section 215 that where in the course of a winding up of a Company it appears that any person who has taken part in the formation or promotion of a Company, or any past or present Director, Manager, Liquidator, or other Officer, has misapplied or retained, or become liable or accountable for, any money or property of the Company, or been guilty of any misfeasance, the Court may examine into his conduct, and compel him to repay any moneys otherwise misapplied, or for which he has become liable or accountable, together with interest, or to contribute such sums of money to the assets of the Company by way of compensation in respect of misapplication or misfeasance.

In *Carter's Case*, 31 Ch.D. 496, a Solicitor was held not to be an officer under Section 165 of the Companies Act, 1862. *In re Great Wheal Polgooth*, 49 L.T. (N.S.) 20, is to the same effect. The same has been held of a Banker in *In re Imperial Land Company of Marseilles*, L.R. 10 Eq. 298, but where Auditors who had been appointed by a Banking Company in pursuance of the Companies Act, 1879, Section 7, and were

spoken of as Officers of the Company in the Articles of Association, the Court of Appeal held that they were Officers within the meaning of the 10th Section of the Companies (Winding Up) Act, 1890, and if guilty of misfeasance may be made liable in proceedings under that section.—*In re London and General Bank* (No. 1) [1895], 2 Ch. 166.

The question as to whether an Auditor is an Officer of every limited liability Company under the Act of 1862 subsequently came before the Court of Appeal, who decided that, as no substantial reason was given why the case differed, in a case identical with *In re The London and General Bank* an Auditor is an Officer, *In re Kingston Cotton Mill Company, Limited* [1896], 1 Ch. 6. This decision was appealed against, but was settled before it was reached by the House of Lords, which is unfortunate from an Auditor's point of view, as there is ground for belief that the appeal might have been successful.

This section does not apply in the case of the executors of a deceased Director or Officer, being personal only.—*Felton's Executors' Case*, 1 Eq. 219; *British Guardian Company*, 14 Ch.D. 335.

The Universities of Oxford and Cambridge Act, 1877 (40 & 41 Vict., c. 48), enacted that the Commissioners for each University appointed by the Act should in Statutes made by them make provision for the audit of the Accounts of the University and of its Colleges, and accordingly the University of Oxford Commissioners made a Statute on the 16th June, 1881, that the Hebdomadal Council should annually appoint a University Auditor, who must be either a professional Accountant carrying on business in London or Westminster, or (if they think fit) a person conversant with Accounts approved by the Permanent Secretary to the Treasury. Nearly if not all the Colleges have Statutes to the same effect for the audit of the College Accounts, and consequently the Accounts of the University Chest and of the Colleges of Oxford referred to are audited by Chartered Accountants.

In conferring the honorary degree of M.A. on a Chartered Accountant who for many years had acted as Auditor of the University Accounts, the following was the Public Orator's felicitous account of the duties discharged by him : " Sexcenta fere sunt, quae ad calculos sunt vocanda—vectigalia, impensae, redditus, praediorum mercedulae, pignora, hypothecae, usurae, decumae, reparationes atque hujusmodi caetera ; his accedunt pecuniae fiduciariae quae in proprios usus debent asservari. Quae quidem omnia non cujusvis est hominis digerere, discutere, inter se compensare. Postulat animi experientiam, postulat ingenii acumen, fidem incorruptam."

The University of Cambridge is, however, behind the sister University in this respect, as the Accounts of the University Chest and of its Colleges are still audited by amateurs.

By the Salmon Fishery Act, 1865 (28 & 29 Vict., c. 121, s. 29), an account of the receipts and disbursements of every

**Audit of
Accounts of
Conservators.**

Board of Conservators, in such form and with such particulars as may be required by the Court of Quarter Sessions that appoints the Board, or any case of a Joint Board by the Court of Quarter Sessions of the Audit County, shall be laid annually before such Courts of Quarter Sessions as aforesaid, and the Justices assembled at such Courts may disallow any item that they consider to be illegal.

By the Territorial and Reserve Forces Act, 1907 (7 Edw. VII, c. 9), the Accounts of County Associations are required to be made up annually and audited.

By the Port of London Act, 1908 (8 Edw. VII, c. 68), the

Accounts of the Port of London Authority, and of its Committees, are to be made up annually and audited by an Auditor to be appointed by the Board of Trade.

**Port of
London.**

By the Judicial Trustees Act, 1896 (59 & 60 Vict., c. 35, s. 17), the Accounts of every Trust of which a Judicial Trustee

**Audit of
Accounts of
Judicial
Trustees.**

has been appointed are required to be audited, and a report thereon made to the Court by the prescribed persons, and by the rules made under this Act the person to audit these Accounts shall be an Officer of the Court, but the Court, if it

considers that the Accounts are likely to involve questions of difficulty, may refer them to a professional Accountant for report.

Notwithstanding the defalcations which occur from time to time of Charitable Funds, no law has yet been passed to compel all such institutions seeking subscriptions from the public to submit their Accounts to professional Auditors, but the Boards of Management of King Edward VII's Hospital Fund and of the Hospital Sunday and Hospital Saturday Funds will not make any awards to those Institutions which do not present their Accounts in a prescribed form duly certified by a professional Auditor.

**Accounts of
Charities.**

As a result, however, of the great European War a number of Charities were formed to relieve the distress of civilians and sailors and soldiers in the countries of our Allies and in the United Kingdom. These became so numerous that the War Charities Act, 1916, was passed requiring such Charitable Societies to be registered, to keep proper Accounts, and to have these Accounts audited at such intervals as might be prescribed by regulations under this Act.

At present there is no legal obligation on merchants and others, trading either alone or in co-partnership with others, to submit their Accounts periodically to Auditors; the practice, however, of doing so voluntarily is becoming very general. The certificate of a professional Auditor is useful in many ways. In addition to the great moral effect the periodical visit of a professional Auditor has on the cashier and other members of the staff, disputes as to Income Tax, adjustments of Accounts between partners, especially where one or more leaves the management of affairs to other partners, negotiation of loans from Bankers and others, are all more easily arranged.

**Auditors of
Accounts of
Merchants.**

In the event of the death of a partner, or the dissolution of the partnership, either by consent or by effluxion of time, the fact of the Accounts having been periodically audited is of the greatest assistance in the settlement between the various parties interested.

Every partner has a right to have accurate Accounts kept

and to have free access to them.—*Rowe v. Wood*, 2 Jac. & W. 558; *Goodman v. Whitcomb*, 3 V. & B. 36.

The Limited Partnerships Act, 1907, Section 6, Sub-section (1), gives power to a limited partner to employ an Auditor to inspect, as his Agent, the books of a firm in which he is a limited partner, and examine into the state and prospects of the partnership business.

It is a common occurrence for persons to advance money to others in business, receiving either a fixed rate of interest or a share of the profits, or both, without taking any part in the management of the business. In these cases it is most important, more especially on behalf of the sleeping partner, that the Accounts be periodically audited.

Auditors on
behalf of
Sleeping
Partners.

It is frequently arranged, under these circumstances, that the Accounts as certified by the Auditor shall be binding on all parties. When this is the case, the Auditor should be made aware of the fact, otherwise a new Account may have to be taken.

In a case decided by the House of Lords, taken on appeal from a judgment by the First Division of the Court of Session, Scotland, the appellant had advanced £15,000 to the respondent, to be used in the business of the respondent for five years. In return for the advance, the appellant was to receive interest and $37\frac{1}{2}$ per cent. of the profits of the respondent's business. The contract stipulated that there should be an annual audit of the respondent's business by a firm of Chartered Accountants, and that their Certificate as to the profits should be binding on both parties. For four years the respondent's books were audited by a member of the firm of Chartered Accountants. Subsequently the appellant raised this action against the respondent for a Judicial Account, on the ground that the audits had not been in terms of the agreement, in respect that the Auditor did not know that his estimate of the profits was to be binding on the appellant and respondent. The Auditor swore in his evidence that he did not know of this agreement, and that, if he had, he would have made out the Account in a somewhat different form. The House of

Lords held that there must be a new Account taken, the Auditor being unaware that his audit was to be final between the parties.—*Teacher v. Calder* [1899], A.C. 451.

Persons interested under a will are now not content to accept what may be handed to them without the certificate of a professional Auditor that the amount has been ascertained after an examination of the books and papers of the Executors and Trustees, while Executors and Trustees themselves are entitled on their own initiative to employ Chartered Accountants to audit their accounts.

The desirability of their doing so is clearly indicated in a case where a Trustee, who was himself one of the beneficiaries, had inadvertently overpaid the other beneficiaries their share of income, and died before any adjustment had been made. It was held that the Executors of the deceased Trustee were not entitled to recover from the other beneficiaries the amounts so overpaid, or to have accrued, or future income impounded till the shares were equalized, by reason of the fact that their testator himself was the person responsible for the mistake that had been made.—*In re Horne; Wilson v. Cox Sinclair* [1905], 1 Ch. 76.

By the Public Trustee Act, 1906 (6 Edw. VII, c. 55, s. 13), the Accounts of any trust may, subject to notice being given in the prescribed manner, be investigated and audited by a professional Accountant, as may be agreed upon by the applicant and the trustees, or, in default of agreement, by the Public Trustee or some person appointed by him.

The proprietors of landed estates, as a rule, require the books of their Agents to be submitted to a professional Auditor for the purpose of ascertaining that their rents and other revenues are collected and accounted for.

Many persons also now entrust to Auditors the examination of the Accounts of their private businesses, or, when not engaged in business, of their private investments, and even of their household expenses.

Where all parties interested in the estate of a deceased person had entered into a compromise, with a view to putting an end to all further disputes and litigation, upon the basis that a Chartered Accountant, a stranger in blood, who had been employed by the deceased in auditing his Accounts, should apply for and obtain a grant of Letters of Administration, with the will and codicils annexed, the Court, upon his application, and subject to the consents of all the persons interested in the estate, and subject to an affidavit of the fitness of the proposed Administrator being filed, made the grant to him under the Probate Act, 1857, s. 73.—*Potter, in the Goods of; Potter v. Potter* [1899], p. 265.

An Auditor is sometimes appointed under a Policy of Fire Insurance as an Assessor to settle the amount payable where, by reason of a fire, the turnover of the business has decreased. By a policy of insurance against fire on business premises an insurance company agreed to pay to the insured, in the event of damage by fire to their property on account of annual net profit, an agreed percentage on the amount by which the turnover in each month after the fire should in consequence of the fire be less than the turnover for the corresponding month of the year preceding the fire. The policy further provided that the amount of all losses under the policy should be assessed by the insured's Auditors. During the currency of the policy property of the insured was damaged by fire. The Auditors gave certificates stating the difference between the turnover for the months after, and the corresponding months in the year before the fire, and the percentage payable. * An arbitration was held to determine the amount payable under the policy. The Auditors' certificates were put in evidence, and a member of the firm of Auditors was called as a witness by the insured and stated that when he gave the certificates he was satisfied that the losses of turnover stated therein were in fact sustained in consequence of the fire—

Held, that the assessments of the Auditor were conclusive evidence of the amount of the loss recoverable under the

policy unless it were shown that the Auditor had misdirected himself in point of law or had omitted to take into consideration some material fact; and that the Auditor might be cross-examined, and the insurance company might call direct evidence, to show that the Auditor had omitted to take into consideration the fact that the losses of turnover were wholly or in part due to other causes than the fire, but not to show that the Auditor's conclusions of fact were erroneous.—*Recher & Co. v. North British and Mercantile Insurance Company* [1915], 3 K.B. 277.

CHAPTER II

APPOINTMENT AND REMUNERATION OF AUDITORS

APPOINTMENT of Auditors under Companies (Consolidation) Act, 1908—
Under Companies Clauses Consolidation Act, 1845—By Board of Trade—
Under Building Societies Acts—Under Friendly Societies Act, 1875—
Under Industrial and Provident Societies Amendment Act, 1913—Auditors
occasionally appointed to guard special interests—Opinion of Counsel on
the appointment of firms as Auditors—Remuneration of Auditors of
Companies—Decision of Court—Scale of Remuneration of Public Auditors—
Remuneration of Auditors of County Associations—Of Auditors of
Charities—Of Private Auditors of Firms and Individuals—Of Executors
and Trustees.

THE Companies Act, 1900, as already stated, first made it compulsory upon Companies, registered under the Companies Act, 1862, to have Auditors, and Section 112 of the Companies (Consolidation) Act, 1908, is to the same effect. Such Auditors may, in the case of a new Company, be appointed by the Directors before the Statutory Meeting, and, if so appointed, they remain in office until the first Annual General Meeting of the Shareholders, when they retire, but are immediately eligible for re-election by the shareholders, in whose hands the right of election of the Auditors thenceforward rests. The shareholders, however, have the power, after Auditors have been so appointed by the Directors, of removing them by a resolution passed at a General Meeting, in which case the shareholders can, at such meeting, appoint other Auditors in their stead.

It is frequently urged from time to time that, because the first Auditors are nominated by the Directors, they are less liable to be independent than would be Auditors selected by the shareholders. There is no foundation for such a statement, as the appointment, once made by the Directors, is irrevocable, so far as the Directors are concerned, and the Auditors from that moment are perfectly independent of their influence, and the shareholders have the opportunity at each Annual Meeting of changing the Auditors should they desire to do so.

Should a casual vacancy occur in the office of Auditor, the Directors may forthwith fill the same ; but, **Appointment of Auditors in event of casual vacancy.** should there be two or more Auditors, then the surviving or continuing Auditor or Auditors may act alone.

Should an appointment of Auditors be not made at an Annual General Meeting, the Board of Trade may, on the application of any member of the Company, appoint an Auditor for the current year, and fix the remuneration to be paid to him by the Company for his services.

A Director or Officer of the Company is not capable of being appointed Auditor of the Company.

Prior to the coming into force of the Companies Act, 1907, it was competent for any shareholder present at an Annual General Meeting to propose any person, eligible **Election of Retiring Auditors.** by the Articles of Association to hold the appointment, to act as Auditor for the ensuing year. This occasionally led to abuse. Auditors, in the execution of their duties, sometimes cause annoyance to Directors who have not acted *intra vires* or have committed or been party to the commitment of irregularities, and the relationship between the Auditors and the Directors become strained. Instances occurred where the Directors, in order to be relieved of the supervision of existing Auditors, arranged with shareholder friends to propose, second, and support at an Annual General Meeting the election of an Auditor or firm of Auditors who, in their opinion, would be more amenable, and, without any explanations being given, an Auditor who had done his duty was thus unfairly superseded. Cases also occurred where, at a small meeting of shareholders, a shareholder seized the opportunity of proposing a personal friend, without giving any reason for supplanting the existing Auditor, and has secured his election before the other shareholders were aware he was not the retiring Auditor.

Evidence to this effect was given before the Committee on the Companies Bill, with the result that a clause was inserted in the Companies Act, 1907, which was continued in the Companies (Consolidation) Act, 1908, enacting that a person,

other than a retiring Auditor, is not capable of being appointed Auditor at an Annual General Meeting unless notice of an intention to nominate that person to the office of Auditor is given by a shareholder to the Company not less than fourteen days before the Annual General Meeting, and the Company has sent a copy of such notice to the retiring Auditor, and has also given notice to the shareholders not less than seven days before the meeting.

The hands of Auditors have been very much strengthened by this enactment, as, should any attempt be made to remove Auditors who have done their duty and thereby displeased a Board of Directors, or a single Director, or the Secretary, or other Official of the Company, or, perhaps, a shareholder or group of shareholders, the Auditors have an opportunity for arranging for the true facts to be placed before the meeting before the appointment of Auditors is made.

The sections of the Companies (Consolidation) Act, 1908, and of the First Schedule to that Act, usually known as Table A, which are the regulations for the management of a Company limited by shares which does not possess Articles of Association, especially referring to Auditors, are set forth in detail hereafter, as are also the preceding sections of Table A, which prescribe what Accounts have to be kept by the Directors and submitted to the Auditors.

Most Companies registered under the Acts of 1862 to 1908, and under the Companies Acts, 1908 to 1917, have

<p>Companies Acts, 1862 and 1908.</p>	<p>Articles of Association containing sections which refer to the Auditors. In all cases where these sections differ from Sections 112 and 113 of the Companies (Consolidation) Act, 1908, those of the Act prevail.</p>
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<p>Appointment of Auditors.</p>	<p>The first Auditors are usually appointed by the Directors, and they remain in office until the first Annual General Meeting of the shareholders, when they retire, but, being eligible for re-election, are, as a rule, continued in their appointment.</p>
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The custom of electing the same Auditors annually is a very sensible one. It is a great mistake to change the Auditors

so long as the shareholders are satisfied they do their duty properly. The longer an Auditor is in office the more

**Advantages
of re-electing
retiring
Auditors.**

familiar he becomes with the business of the Company, and consequently the more likely to detect any inaccuracies in the Accounts, either accidental or intentional.

When a Company has been incorporated by special Act of Parliament, such Act is incorporated with the Companies

**Companies
incorporated by
special Act.**

Clauses Consolidation Act, 1845 (8 Vict., c. 16), whose clauses and provisions, save so far as they are expressly varied or excepted by the private Act, apply to the Company incorporated by such Act, and to the undertaking for carrying on which such Company has been incorporated, so far as the same are applicable thereto respectively; and such clauses and provisions, as well as the clauses and provisions of every other Act which are incorporated with the private Act, form part of such Act, and are construed together therewith as forming one Act.

With respect to the appointment of Auditors of Companies incorporated by special Act of Parliament, it is enacted by the

**Appointment
of Auditors.**

Companies Clauses Consolidation Act, 1845, that unless, by the special Act, Auditors are directed to be appointed otherwise than by the Company, the shareholders present, personally or by proxy, shall, at the first Ordinary Meeting after the passing of the special Act, elect the prescribed number of Auditors, and if no number is prescribed, two Auditors; and at the first Ordinary Meeting of the Company in each year thereafter the Company shall elect an Auditor to supply the place of the one retiring from office.

An Auditor once elected, unless he be removed or be disqualified or resign, continues to be an Auditor until another is elected in his stead.

Where no qualification is prescribed by the special Act, every Auditor, except those of Railway Companies, is obliged to

Qualification.

hold at least one share in the undertaking, but he is not allowed to hold any office in the Company, or be in any other manner interested in its concerns, except as a shareholder.

One of the Auditors (to be determined in the first instance by ballot among themselves, unless they otherwise agree, and afterwards by seniority) goes out of office at the first Ordinary Meeting in each year, but he is at once eligible for re-election, and after any such re-election he is, with respect to the going out of office by rotation, deemed a new Auditor.

Mode of
re-election.

Should a vacancy occur among the Auditors during the current year, then, at any General Meeting of the Company, the vacancy may, if the Company think fit, be supplied by election of the shareholders.

If at any meeting at which an election of Auditors ought to take place the prescribed quorum are not present within an hour of the time appointed for the meeting, no election of Auditors shall be made, and the meeting stands adjourned to the following day at the same time and place ; and if at such adjourned meeting the prescribed quorum are not present within an hour from the time appointed for the meeting, the existing Auditors shall continue to act until new Auditors are appointed at the first Ordinary Meeting held in the following year.

Quorum at
Meeting.

With reference to the appointment of Auditors to Railway Companies, the Regulation of Railways Act, 1868, enacts that the sections in the Companies Clauses Consolidation Act, 1845, which makes it necessary for an Auditor to hold at least one share, shall not apply, and consequently, their Auditors need not be shareholders.

Auditors of
Railway
Companies
need not be
Shareholders.

The Regulation of Railways Act, 1868, also enacts that the Board of Trade, may upon application made in pursuance of a resolution passed at a meeting of the Directors, or at a General Meeting of the Company, appoint an Auditor in addition to the Auditors of such Company, and it shall not be necessary for any such Auditor to be a shareholder in the Company.

Board of Trade
may appoint
Auditors of
Railway
Companies.

In the Form of Provisional Order under the Electric Lighting Acts of 1882 and 1888, issued by the Board of Trade in November, 1892, for Undertakers, being a Company or

Person, the Annual Statement of Accounts has to be examined and audited by an Auditor appointed by the Board of Trade. This Auditor also performs his duties independently of the Auditors appointed by the shareholders.

**Auditor
appointed
under the
Electric
Lighting Act.**

These Auditors are appointed, not in the interests of the shareholders, but to protect the consumers of water and electric light respectively, and the question having arisen as to whether the shareholders of an Electric Lighting Company could appoint the Official Auditor as the Auditor of the Company, the Board of Trade, in a letter dated 18th December, 1895, addressed to the Institute of Chartered Accountants, stated that they held it to be outside the province of this Auditor to act as Auditor on behalf of the shareholders, as the audit conducted by this Auditor is of a different character to that of a shareholders' audit, and has in view different objects.

The Building Societies Act, 1874 (37 & 38 Vict., c. 42), contains a clause requiring that the rules of every society established under the Act shall set forth the manner of appointing, remunerating, and removing its Auditors, and Section 3 of the Building Societies Act, 1894 (57 & 58 Vict., c. 47), enacts that one of these Auditors shall be a person who publicly carries on the business of an Accountant.

**Auditors of
Building
Societies.**

In the majority of Building Societies one Auditor is usually appointed by the Directors, and two other Auditors are selected at each Annual Meeting out of the body of the members.

The Friendly Societies Act, 1896 (59 & 60 Vict., c. 25), enacts that every registered Society and Branch shall once

**Auditors of
Friendly
Societies.**

at least in every year submit its Accounts for audit, either to one of the Public Auditors referred to below, or to two or more Auditors appointed by the Society or Branch ; but it does not lay down any rule as to their mode of election, beyond stating they shall be appointed as the rules of each particular Society or Branch provide. The Treasury may from time to time appoint Public Auditors for the purposes of this Act, but it is optional

with the Societies whether they employ any of these Public Auditors, or choose others to fill the appointments.

Every candidate for the position of Public Auditor should send a written request for the same to the Parliamentary Secretary to the Treasury, 12 Downing Street, Whitehall, London, S.W.1, and should state—

- (a) His full name ;
- (b) His address ;
- (c) His principal office address, and any other address from which, if appointed, he would conduct his business as a Public Auditor.
- (d) His professional qualifications as an Accountant ;
- (e) Full particulars as to his experience as an Auditor of Societies, giving (1) the names of the Registered Societies for which he has acted as Auditor ; (2) the Act under which each Society is registered ; and (3) the number of audits carried out for each Society ;
- (f) His reasons for thinking that the appointment of a Public Auditor, in the District where he practices or resides, is desirable in the public interest. Public Auditors are appointed annually, and from the 1st of January of each year. - Applications should reach the Treasury not later than 1st November.

The conditions under which Public Auditors hold their appointments will be found in the Appendix.

The Industrial and Provident Societies Amendment Act, 1913 (3 & 4 Geo. V, c. 31), prescribes that the
Auditors of
Industrial
and Provident
Societies.
Accounts of all Registered Societies shall once in every year be submitted for audit, to one or more of the Public Auditors.

In a few Companies, Auditors are appointed to look after the interests of a particular class or section of those concerned in their welfare.

For instance, some Assurance Companies have Auditors for the Assured as well as for the Assurers or shareholders. Occasionally the Debenture Holders of a Company have their own Auditor, as have also in some Companies the Preference Shareholders.

Many Companies, principally financial, have been formed with "Founders' Shares," the holders of which are entitled to a proportion of the profits after the other shareholders have received a minimum dividend. In all these cases their specially appointed Auditors have to ascertain that their clients receive their full privileges, and that the reserves for depreciation, for loss on realization of debts, and the general reserve, are not unduly high.

Auditors
occasionally
appointed to
guard special
interests.

The appointment of such Auditors is usually made at meetings of the holders of the shares or debentures, or the Assured, as the case may be, specially summoned for the purpose of making the appointment, or at the Annual Meetings, when the other Auditors are elected.

These cases are, however, exceptional; in nearly all Companies the Auditors are the representatives of the general body of the shareholders, and it is their duty to require the Accounts presented to them for signature to be prepared in the interests of all the parties concerned.

The question having arisen as to whether the appointment of a firm of Chartered Accountants by name was in compliance with the Companies Act, 1862, First Schedule, usually known as Table A, the following case was submitted in May, 1882, by the Solicitors of the Institute of Chartered Accountants in England and Wales for the opinion of Counsel.

Appointment
of Firms as
Auditors.

CASE

The Articles of Association scheduled to the Companies Act, 1862, Table A, Clause 83, provide as follows—

Case for
Opinion of
Counsel.

"Once at the least in every year the Accounts of the Company shall be examined and the correctness of the Balance Sheet ascertained by one or more Auditor or Auditors."

Clause 84. "The first Auditors shall be appointed by the Directors. Subsequent Auditors shall be appointed by the Company in General Meeting." Substantially for the present purpose these clauses have been adopted in the Articles of

Association of the great majority of Companies established since the passing of the Act.

Last year a question was raised before the Directors of a large Company whether the appointment of a firm of Accountants consisting of four persons, not severally named in the title of the firm, was a legal appointment in conformity with the clauses above mentioned, and this year the same question has again been raised.

Counsel will please advise on the following questions, viz.—

1. If a resolution be passed appointing “Smith, Jones & Co.” Auditors of a Company, would that resolution be a legal appointment of an Auditor within the meaning of the Act?

2. Would such resolution naming the firm of “Smith, Jones & Co.” include Robinson and Brown, they being members of the above firm?

OPINION

On the points submitted to me I am of opinion—

1. Yes. The name or style under which a firm carries on business is merely a conventional name applicable to those persons only who are members of the firm on each occasion when the name is used. If, therefore, one person, Smith, is trading under the firm of “Smith, Jones & Co.,” he will be one Auditor within the meaning of Clause 83, Table A, of the Act of 1862. If two persons, Smith and Jones, are carrying on business under that style, they will be “more Auditors” within the meaning of the clause.

Counsel's
Opinion.

2. Such resolution as referred to would include Robinson and Brown, if they were members of the firm at the time the resolution was passed. It could always be shown in evidence that they were at that time partners in the firm of “Smith, Jones & Co.”—*Carruthers v. Sheddon*, 6 Taunt. 15; *Bass v. Clive*, 4 M. & S. 13.

R. B. FINLAY, K.C.
ARTHUR L. ASHTON.

As Section 112 of the Companies (Consolidation) Act, 1908, requires every Company at each Annual General Meeting to appoint "an Auditor or Auditors," the above opinion of Counsel applies.

The remuneration of the first Auditors of a new Company registered under the Companies (Consolidation) Act, 1908, is, by Section 112, Sub-section (7), where the Auditors have been appointed before the Statutory Meeting, fixed by the Directors, that of Auditors appointed subsequently by the Shareholders in General Meeting. When a Company is registered with special Articles of Association, a clause is usually inserted to the same effect. When the Board of Trade, on the application of a member of the Company, appoints an Auditor, they are required to fix the remuneration to be paid to him by the Company for his services.

Section 91 of the Companies Clauses Consolidation Act, 1845, provides that the remuneration of the Auditors shall, unless otherwise provided by the special Act of Parliament, be settled by a General Meeting of the Company, and it has been decided that Auditors appointed under this section cannot recover any other remuneration than that fixed upon at a General Meeting of the Company.—*Page and Bishop v. Eastern and Midlands Railway Co.*, I.C. & E. 280.

In this case the Plaintiffs had been appointed Auditors in terms of a resolution of shareholders of 5th October, 1878, at a remuneration of five guineas each per annum.

Nothing was said definitely as to the character of the work to be done, and for some time the Plaintiffs only audited the Capital Account of the Company. When required to audit the Revenue Account also they declined to do so without an order from the Directors directing them to audit both the Capital and Revenue Accounts, and the Directors thereupon passed a resolution to this effect.

Remuneration
of Auditors
under Act of
1908.

Under
Companies
Clauses
Consolidation
Act, 1845.

Action by
Auditors for
additional
Remuneration.

The Plaintiffs audited the Revenue Account and claimed to be paid in respect of it an additional fee to the five guineas payable under the resolution of the 7th October, 1878. This the Directors refused to agree to.

Counsel for the Plaintiffs relied on *Bill v. The Darent Valley Railway Company*, 26 L.J. Ex. 81, to show that a resolution at a General Meeting was not necessary to entitle Plaintiffs to maintain

Argument of Counsel.

an Action.

Counsel for the Defendants contended the case was distinguishable, as there the Directors had power to appoint a Secretary, and the fixing of his remuneration was incidental to the appointment, but that the choice of Auditors was expressly confined by Section 91 to a General Meeting of the Company.—*Taylor v. Brewer*, 1 M. & S. 290, cited.

Grove J., after stating the facts, and saying that it was doubtful whether the communication of the resolution was intended to bind the Company, continued :
Decision of Court in favour of Defendants. “ But even if it was intended to bind the Company, I am of opinion that the Company would not be legally liable. To hold that they were would be to repeal the express provision of Section 91. *Bill v. The Darent Valley Railway Company* was relied on for the Plaintiffs, but I think that case is distinguishable on the ground mentioned in the argument, namely, that there the Directors had the power of appointing the Secretary, and the remuneration was fixed as one of the terms of his appointment. In this case the Company alone had the power of appointing Auditors, they exercised that power, and at the same time determined the Auditors’ remuneration. There must be judgment for the Defendants.”

Although the remuneration of the Auditors has to be formally voted by the shareholders in General Meeting, yet it is usual for the fee to be previously agreed between the Directors and the Auditors, the amount being calculated according to the time occupied on the audit.

Remuneration usually agreed with Directors.

The Institute of Chartered Accountants have not prescribed any scale of charges, but the following scale is adopted by the majority of the Members practising in London—

Scale of charges of Chartered Accountants.	Per day of Seven hours.	
	£	s. d.
Principals	£5	5s. to £10 10s.
First Class Clerks, if Chartered Accountants	£2	2s. to £3 3s.
First Class Clerks (if not)	£1	11s. 6d. to £2 2s.
Other Clerks	£1	1s.

Exclusive of disbursements.

The fees payable to Public Auditors appointed by the Treasury for auditing the accounts of Friendly Societies and specially authorized Societies granting Friendly Society benefits are—

Fees of Public Auditors.	£	s.	d.
For Societies with not more than 500 members, in respect of each 100 members or part thereof	1	1	0
With an additional 10s. 6d. in respect of each additional 100 members or part thereof. No fee, however, to exceed £52 10s. unless by special arrangement.			

The scale of fees payable to Public Auditors for auditing the accounts of all other Societies registered under the Friendly Societies Act, viz., Benevolent Societies, Working Men's Clubs, specially authorized Societies (except such as grant Friendly Society benefits) and Cattle Insurance Societies, is as follows—

	£	s.	d.
For Societies whose total gross receipts do not exceed £10,000 per annum, in respect of each £2,000 or fraction thereof	1	1	0
Where the gross receipts exceed £10,000 per annum, the fee is to be fixed by special arrangement.			

The fees for auditing the accounts of Industrial and Provident Societies are—

	£	s.	d.
For Societies whose total sales do not exceed £10,000 per annum, in respect of each £2,000, or fraction thereof	1	1	0

For Societies whose total sales exceed £10,000, £ s. d.
 but do not exceed £25,000 per annum, in respect
 of the first £10,000 5 5 0
 with an additional 10s. 6d. in respect of each
 additional £2,000, or fraction thereof.

When the sales exceed £25,000 per annum the fee to be fixed by special arrangement.

The word "sales" in the case of Societies for the buying and selling of land to include amounts which become due in respect of the repayment of advances during the year.

The Auditor may accept audits on terms lower than those of the above scale.

The Auditor of a County Association (Territorial and Reserve Forces Act, 1907) is appointed by the Association subject to the approval of the Army Council. He must be a member either of an Institute or Society of Chartered Accountants in the United Kingdom or of the Incorporated Society of Accountants and Auditors. The fees of the Auditor are fixed by the Association, subject to the approval of the Army Council, and they form a charge against the public funds of the Association.

The Auditors of the Accounts of Hospitals and Charitable Institutions are usually appointed by the Governing Bodies, although the Subscribers would undoubtedly have the right to select their own representative, should they express a wish to do so, at an annual meeting, in the absence of any regulation forming part of the constitution of the Institution, which would naturally govern the mode of election.

Under the War Charities Act, 1916, raising money for a war charity is prohibited unless the Charity is registered, and books of account showing the total receipts and the total payments of any collection, bazaar, sales, entertainment, or exhibition have to be audited by some person or persons approved by the Registration Authority.

The Auditors of the Accounts of a firm are occasionally appointed by the Articles of Partnership, failing that by agreement between the partners. A sleeping partner usually

makes a condition that the appointment of Auditor shall be vested in him so long as his capital remains in the firm.

The fee of an Auditor is usually arranged for the audit of the Accounts of a year's transactions, as contained in the books, and an Auditor in arranging his fee should make a contract to this effect.

Auditors of
Firms, etc.

In *Litchfield & Sons v. Markus* (reported in *The Accountant*, Vol. XII, p. 676) the Plaintiffs agreed, in December, 1885, to audit the Defendant's books for £50 a year. They completed the audit for the year ending 31st December, 1885, in the following March, and claimed their fee. The Defendant contended that the £50 claimed was for a year's work, and was not due until a year from the date of the contract. His Honour Judge Coventry ruled that the contract meant £50 for a year's services, and that the action had been brought too soon.

An Auditor had prepared the private accounts of income and expenditure of a Baronet for thirteen years, and was paid for some years an annual fee of fifty guineas, and subsequently an annual fee of thirty-five guineas. On 22nd May he was informed the engagement would terminate on 30th June, but he contended the notice was insufficient. For the defence it was contended that the engagement was not a yearly one, although the amount was paid annually, and defendant was not entitled to notice. Eighteen pounds seven shillings and sixpence was paid into Court. It was held by Rentoul, J., sitting as Judge of the City of London Court, that judgment must be for the plaintiff for the full amount claimed, with costs.—*Homan v. Quilter* [1908], *Accountant L.R.* (i.) 25.

Auditors occasionally lose their appointments through the compulsory transfer, by Act of Parliament, of the undertakings whose accounts they have been in the habit of auditing, to other undertakings, and while Directors and other officials have received adequate compensation for loss of office, the claims of Auditors have been frequently ignored.

Compensation
to Auditors of
Companies'
Accounts.

The precedent established by the Metropolis Water Act,

1902, of granting compensation to an Auditor under such circumstances, should in future be followed by a clause being inserted in Bills before Parliament prescribing the mode of compensation.

Section 49 of this Act is as follows: "The Water Board shall pay to the Auditor of the Accounts of the Metropolitan Water Companies such annual or other sum, by way of compensation for loss of office, as the Local Government Board may think just."

A claim for compensation by the Auditors of a Building Society for damages owing to the loss of their appointments through the suspension of the Society was referred by the Judge to Chambers. The parties subsequently agreed, subject to the Judge's sanction, for the Auditors to receive each an agreed sum by way of compensation and the costs of the proceedings. *In re The Birkbeck Permanent Building Society*. —(*Times* newspaper, 19th February, 1913.)

The Auditors of the Accounts of a deceased person's estate are, as a rule, appointed by the Executors or Trustees, although frequently they may be nominated for the purpose by any person interested, such as one of the beneficiaries. Their fees are the same as for ordinary audits, and when the audit is performed annually a fixed fee is usually arranged.

**Auditors of
Executorship
Accounts.**

As a rule, these annual fees are paid out of the income of the estate, but it will be seen from the following case that, where the audit is performed not so much for the purpose of arriving at the amount to be paid annually to various persons as for the purpose of satisfying the Trustees that the capital is kept intact, the fee is chargeable against the capital, and not against the income of the estate.

A partner, on retiring from his firm, left his capital in the business under an agreement with the continuing partners that it should be a debt due from them to him, and bearing interest until repayment. The agreement contained a stipulation that the outgoing partner should have free access to the books at all times, and various provisions intended to satisfy the outgoing partner from time to time of the solvency of the

business; upon breach of any one of these provisions he was to be at liberty to call in his capital. The outgoing partner subsequently died, having by his will bequeathed his residuary estate, which included his capital in the business, to a Trustee, upon trusts for one for life and for others in remainder.

It was held by the Court of Appeal that the Trustee was at liberty to employ professional Accountants and Valuers for an audit and stocktaking once a year, if desired, or oftener if special circumstances so required, and that the expenses of these audits were costs, charges, and expenses incurred by the Trustee in the execution of the trusts of the will for the benefit of the whole estate, and were therefore payable out of capital, and not out of income.—*In re Bennett; Jones v. Bennett* [1896], 1 Ch. 778.

Auditors are frequently named in the will of a Testator, and when so appointed are entitled to perform their duties without being interfered with, even though the parties interested might wish to choose others in their stead.

**Auditors
appointed by
Will.**

A Testator (Sir Corbet Corbet) devised his estate to Trustees in trust to apply the rents in paying off incumbrances, and directed them, by a codicil, to employ Mr. Williams to be the Auditor of the accounts of his estate during the execution of the trusts of his will, and to allow him proper annual remuneration. Some difference having arisen between the Auditor and the Trustees, one of them wrote to him stating that it was their intention to remove him from his office, and to appoint someone else in his place. A Bill was filed, praying that the Trustees might be restrained from carrying their intention into effect.

Shadwell, V.C., after stating there was no ground for imputing anything improper to the Auditor, decided that under the codicil he had as much right to be the Auditor as any one of the devisees had to the real estate. The Trustees, therefore, were not justified in attempting to remove him, and he was entitled to be continued as Auditor, and to be allowed a proper remuneration, the amount of which must be fixed

by the Master.—*Williams v. Corbet*, 8 Simons, 349; S.C. 6 *L.J.* (N.S.) Ch. 182; Revised Reports, Vol. 42, p. 200.

When a Testator gives power to his Trustees to appoint a factor to the estate, who may be one of themselves, but at the same time guards that provision with this further one: that the other Trustees shall at least once in every year, within one month from the termination of the year, examine and audit the whole of the last year's Accounts, require vouchers, and see that the Accounts had been properly kept, and that the money had been properly received and properly applied, the Trustees are guilty of *culpa lata* if they fail to call for annual Accounts.—*Carruthers v. Carruthers* [1896], A.C. 659.

The condition and Accounts of any Trust shall, by Section 13 of the Public Trustee Act, 1906, on an application being made and notice thereof being given by any Trustee or beneficiary, (a) if the applicant is a beneficiary, to every Trustee, and (b) if the applicant is a Trustee to each co-Trustee, and also to the person entitled to the receipt of the income of the Trust Property, be investigated and audited by such Solicitor or Public Accountant as may be agreed on by the applicant and the Trustee, or, in default of agreement, by the Public Trustee or some person appointed by him.

The remuneration of the Auditor and other expenses of the investigation and audit shall be such as may be agreed on by the Trustees and the person entitled to the receipt of the income of the Trust Property, or, in default of such agreement, determined by the Public Trustee. The sections of the Public Trustee Act, 1906, and the rules made thereunder relating to the audit of Trust Accounts, will be found in Chapter IV.

CHAPTER III

THE LAW RELATING TO AUDITORS AND THE BOOKS AND ACCOUNTS OF JOINT STOCK COMPANIES, BUILDING SOCIETIES, FRIENDLY SOCIETIES, INDUSTRIAL AND PROVIDENT SOCIETIES, AND SAVINGS BANKS

THE Companies (Consolidation) Act, 1908—The Companies Act, 1913—The Mortgage Debenture Act, 1865—The Mortgage Debenture (Amendment) Act, 1870—Guernsey Company Law—Jersey Company Law—The Companies Clauses Consolidation Act, 1845—The Companies Clauses Act, 1863—The Companies Clauses Act, 1869—The Statutory Companies (Redeemable) Stock Act, 1915—The Public Utility Companies (Capital Issues) Act, 1920—The Railways Construction Facilities Act, 1864—The Railway Companies Act, 1867—The Railway Companies (Scotland) Act, 1867—The Regulation of Railways Act, 1868—The Railway and Canal Traffic Act, 1888—The Regulation of Railways Act, 1889—The Railway Companies (Accounts and Returns) Act, 1911—The Gasworks Clauses Act, 1847—The Gasworks Clauses Act, 1871—The Waterworks Clauses Act, 1847—The Electric Lighting (Clauses) Act, 1899—The Stannaries Act, 1869—The Stannaries Act, 1887—The Assurance Companies Act, 1909—The Building Societies Act, 1874—The Building Societies Act, 1894—The Friendly Societies Act, 1896—The Societies Borrowing Powers Act, 1898—The Collecting Societies and Industrial Assurance Companies Act, 1896—The Industrial and Provident Societies Act, 1893—The Industrial and Provident Societies Act, 1894—The Industrial and Provident Societies (Amendment) Act, 1913—The Trustee Savings Banks Act, 1863—The Savings Banks Act, 1891—The Savings Banks Act, 1920—The Trustee Savings Bank Act, 1918—The Municipal Savings Banks (War Loan Investment) Act, 1916.

As it is necessary that every one holding an office of a public nature should clearly understand his legal responsibilities,

Auditor should be acquainted with Acts of Parliament relating to his duties. an Auditor should be acquainted with the Acts of Parliament under which his appointment is made.

It is consequently incumbent on an Auditor of a Public Company, or of a Building or other Society, that he should not only be familiar with all the Acts regulating the Company or Society of which he is the Auditor, but that he should also be acquainted with the law generally as laid down by Judges, and special attention should be given to those sections of the Acts of Parliament relating to the appointment and duties of the Auditors, and to the Books and Accounts.

When a Company has been incorporated by Special Act of Parliament, or if registered under the Companies Acts, 1862

to 1907, or under the Companies Acts, 1908 to 1917, has Articles of Association, the Auditor should be provided with a copy of the Private Act or the Articles of Association, and these should be read in conjunction with the Public Acts, as explained in the first chapter.

The Auditor of a Building Society, or Friendly Society, or an Industrial and Provident Society should also be provided with a Copy of the Rules of the Society, which must in the same manner be read in conjunction with the Public Act or Acts under which the Society is registered.

The present chapter contains the sections of the Public Acts having reference to the appointment and duties of Auditors of Companies and Societies, and to the Books and Accounts which have to be examined by them. The Acts of Parliament from which they are taken do not follow in chronological order, but for convenient reference are so arranged that the Acts referring to the same class of Companies and Societies will be found together.

THE COMPANIES (CONSOLIDATION) ACT, 1908.

(8 Ed. VII, c. 69.)

[21st December, 1908.]

10.—(1) There may, in the case of a Company limited by shares, and there shall in the case of a Company limited by guarantee or unlimited, be registered with the Memorandum Articles of Association signed by the subscribers to the Memorandum and prescribing regulations for the Company.

Registration of
Articles.

(2) Articles of Association may adopt all or any of the regulations contained in Table A in the First Schedule to this Act.

(3) In the case of an unlimited Company or a Company limited by guarantee the Articles, if the Company has a share capital, must state the amount of share capital with which the Company proposes to be registered.

(4) In the case of an unlimited Company or a Company limited by guarantee, if the Company has not a share capital, the Articles must state the number of members with which

the Company proposes to be registered, for the purpose of enabling the Registrar to determine the fees payable on registration.

11. In the case of a Company limited by shares and registered after the commencement of this Act, if Articles are not registered, or, if Articles are registered, in so far as the Articles do not exclude or modify the regulations in Table A in the First Schedule to this Act, those regulations shall, so far as applicable, be the regulations of the Company in the same manner and to the same extent as if they were contained in duly registered Articles.

13.—(1) Subject to the provisions of this Act and to the conditions contained in its Memorandum, a Company may by special resolution alter or add to its Articles ; and any alteration or addition so made shall be as valid as if originally contained in the Articles and be subject in like manner to alteration by special resolution.

Application of
Table A.

Alteration of
Articles by
Special
Resolution.

(2) The power of altering Articles under this section shall, in the case of an unlimited Company formed and registered under the Joint Stock Companies Acts, extend to altering any regulations relating to the amount of capital or its distribution into shares, notwithstanding that those regulations are contained in the Memorandum.

22.—(1) The shares or other interest of any member in a Company shall be personal estate, transferable in manner provided by the Articles of the Company, and shall not be of the nature of real estate.

Nature of
Shares.

(2) Each share in a Company having a share capital shall be distinguished by its appropriate number.

24.—(1) The subscribers of the Memorandum of a Company shall be deemed to have agreed to become members of the Company, and on its registration shall be entered as members in its register of members.

Definition of
Member.

(2) Every other person who agrees to become a member of a Company, and whose name is entered in its register of members, shall be a member of the Company.

The Agreement is satisfied by the allotment of a larger number of shares on a formal letter of application.—*Gilman's case*, (1886) 31 Ch.D. 420.

The Auditor must satisfy himself that all the shares applied for on the Memorandum of Association are included in the capital in the balance sheet, whether the same have or have not been allotted, and if not paid for the amount unpaid, so far as the same is called up on the other shares of like class, must be treated as "calls in arrear."

25.—(1) Every Company shall keep in one or more books a register of its members, and enter therein the following particulars—

Register of
Members.

(i) The names and addresses, and the occupations, if any, of the members, and in the case of a Company having a share capital a statement of the shares held by each member, distinguishing each share by its number, and of the amount paid or agreed to be considered as paid on the shares of each member.

(ii) The date at which each person was entered in the register as a member.

(iii) The date at which any person ceased to be a member.

(2) If a Company fails to comply with this section it shall be liable to a fine not exceeding five pounds for every day during which the default continues ; and every Director and Manager of the Company who knowingly and wilfully authorizes or permits the default shall be liable to the like penalty.

The register may consist of several books, which, by reference from one to the other, will supply all the information required.—*Wickersheim's Case*, 8 Ch. 831, 836.

Under certain circumstances it is probable that Allotment Sheets might constitute a register of members.—*Ex parte Cammell* [1894], 1 Ch. 528 ; [1894] 2 Ch. 392.

A Company having a share capital, whose objects comprise the transaction of business in a Colony, may, if so authorized by its Articles of Association, cause to be kept in any Colony in which it transacts business a branch register of members resident in that Colony (Sections 34-36).

If shares be paid in whole or in part not in money but in money's worth, it should be stated on the register of members that the shares are to the extent of such money's worth paid up, although no money has passed.—*Anglesea Colliery Co.*, 2 Eq. 379 ; 1 Ch. 555.

A contract between a Company and one of its shareholders that calls shall be set off against goods to be supplied by the shareholder instead of being paid for in money is *ultra vires*.—*Pellatt's Case*, 2 Ch. 527.

26.—(1) Every Company having a share capital shall once at least in every year make a list of all persons who on the **Annual List of Members and Summary.** fourteenth day after the first or only ordinary general meeting in the year, are members of the Company, and of all persons who have ceased to be members since the date of the last return or (in the case of the first return) of the incorporation of the Company.

(2) The list must state the names, addresses, and occupations of all the past and present members therein mentioned, and the number of shares held by each of the existing members at the date of the return, specifying shares transferred since the date of the last return or (in the case of the first return) of the incorporation of the Company by persons who are still members and have ceased to be members respectively, and the dates of registration of the transfers, and must contain a summary distinguishing between shares issued for cash and shares issued as fully or partly paid up otherwise than in cash, and specifying the following particulars—

(a) The amount of the share capital of the Company, and the number of shares into which it is divided ;

(b) The number of shares taken from the commencement of the Company up to the date of the return ;

(c) The total amount called up on each share ;

(d) The total amount of calls received ;

(e) The total amount of calls unpaid ;

(f) The total amount of the sums (if any) paid by way of commission in respect of any shares or debentures, or allowed by way of discount in respect of any debentures, since the date of the last return ;

(g) The total number of shares forfeited ;

(h) The total amount of shares or stock for which share warrants are outstanding at the date of the return ;

(i) The total amount of share warrants issued and surrendered respectively since the date of the last return ;

(k) The number of shares or amount of stock comprised in each share warrant ;

¹(l) The names and addresses of the persons who at the date of the return are the Directors of the Company, or occupy the position of Directors, by whatever name called ; and

(m) The total amount of debt due from the Company in respect of all mortgages and charges which are required (or, in the case of a Company registered in Scotland, which, if the Company had been registered in England, would be required) to be registered with the Registrar of Companies under this Act, or which would have been required so to be registered if created after the first day of July nineteen hundred and eight.

(3) The summary must also (except where the Company is a private Company) include a statement, made up to such date as may be specified in the statement, in the form of a balance sheet, audited by the Company's Auditors, and containing a summary of its share capital, its liabilities, and its assets, giving such particulars as will disclose the general nature of those liabilities and assets, and how the values of the fixed assets have been arrived at, but the balance sheet need not include a statement of profit and loss.

(4) The above list and summary must be contained in a separate part of the register of members, and must be completed within seven days after the fourteenth day aforesaid, and the Company must forthwith forward to the Registrar of Companies a copy signed by the Manager or by the Secretary of the Company.

(5) If a Company makes default in complying with the requirements of this section it shall be liable to a fine not exceeding five pounds for every day during which the default continues, and every Director and Manager of the Company who knowingly and willingly authorizes or permits the default shall be liable to the like penalty.

Every year means a year from 1st January to 31st December.—*Gibson v. Barton*, 10 Q.B. 329 ; *Edmonds v. Foster*, 33 L.T. 690.

Default by the Company is a criminal offence.—*Reg. v. Tyler* [1891], 2 Q.B. 588.

¹ Additional information is now required by the Companies (Particulars as to Directors) Act, 1917. (See Appendix.)

Every Private Company is required by Section 1 (3) of the Companies Act, 1913, to send to the Registrar the following document in addition to the above. A certificate signed by a Director or the Secretary that the Company has not, since the date of the last Return, or in the case of a first Return since the date of the incorporation of the Company, issued any invitation to the public to subscribe for any shares or debentures of the Company, and where the list of members exceeds fifty, also a certificate that such excess consists wholly of persons who, under Section 121 of the Companies (Consolidation) Act, 1908, as amended by the Act of 1913, are to be excluded in reckoning the number of fifty.

The statement referred to in Sub-section (3) is clearly intended to afford such information to persons contemplating supplying goods to the Company, as will enable them to come to a decision as to whether they can safely give credit to the Company. In the case of Companies registered prior to the 1st January, 1901, the amount paid to the vendor of a business in respect of goodwill was frequently not specified in the agreement, and was included with the price paid for buildings, plant, machinery, and other assets. It is therefore impossible to place a value on each class of fixed assets as were included in an agreement of this nature ; and in preparing the annual statement a memorandum explaining the impossibility of so doing should be affixed. In all cases, however, stock-in-trade, amounts due from debtors, the balance at the bankers, and the cash in hand can be set out with an explanation as to how the values of the stock-in-trade and the amount due from debtors have been arrived at.

It does not necessarily follow that an exact copy of the balance sheet of a Company should be included in the annual return, although the statement referred to in the section will probably be based upon the information contained in it. The statement does not require to be actually signed by the Auditors, but it should bear evidence upon it that it has been audited by them.

A Company forwarded to the Registrar a Balance Sheet purporting to be in compliance with this section, which, in the statement of assets, set out the following particulars: "Goodwill, trade marks, machinery, furniture, and fixtures, £100,000. Goodwill and trade marks at the sum at which they were taken over by the company. Machinery, furniture, and fixtures at cost, less depreciation"—

Held, that this Balance Sheet did not comply with the requirements of Section 26, Sub-section 4 ; by Lord Alverstone, C.J., because it stated that different parts of the fixed assets had been valued in different ways and did not state the separate values of those parts ; by Pickford, J., because it ought to state the separate

values of the tangible and intangible fixed assets.—*Galloway v. Schill, Seeborn & Co., Limited* [1912], 2 K.B. 354.

The Articles of a Company contained the restrictions, limitations, and prohibitions mentioned in clauses (a), (b), and (c) respectively of Section 121, Sub-section 1, of the Act, but in each of two years the number of its members (exclusive of persons in the employment of the Company) in fact exceeded fifty. Informations laid against the Company for having in each of the two years respectively made default in forwarding to the Registrar of Companies a statement in the form of an audited balance sheet as required by Section 26 were dismissed by a magistrate upon the ground that the Company was still a private Company within the meaning of Section 121 and was therefore not bound to forward the statement—

Held, that the decision of the magistrate was right, inasmuch as a Company whose articles contained the restrictions, limitations, and prohibitions mentioned in clauses (a), (b), and (c) of Sub-section 1 of Section 121 remains a “private Company” within the meaning of the definition contained in the section, even though those restrictions, limitations, and prohibitions are not in fact complied with by the Company.—*Park v. Royalties Syndicate, Ltd.* [1912], 1 K.B. 330.¹

27. No notice of any trust, expressed, implied, or constructive, shall be entered on the register, or be receivable by the Registrar, in the case of Companies registered in England or Ireland.

Trusts not to
be entered
on Register.

This section does not apply to Scotland, it being the Scottish practice to notice trusts in the transfer

and registration of deeds.

The Public Trustee Act, 1906, Section 11 (5), enacts that the entry of the Public Trustee by that name in the books of a Company shall not constitute notice of a trust, and a Company shall not be entitled to object to enter the name of the Public Trustee on its books by reason only that the Public Trustee is a corporation, and, in dealings with property, the fact that the person or one of the persons dealt with is the Public Trustee shall not of itself constitute notice of a trust.

30.—(1) The register of members, commencing from the date of the registration of the Company, shall be kept at the registered office of the Company, and, except when closed under the provisions of this Act, shall during business hours (subject to such reasonable restrictions as the Company in general meeting

Inspection of
Register of
Members.

¹ In consequence of this decision the Companies Act, 1913, was passed. (See p. 135.)

may impose, so that not less than two hours in each day be allowed for inspection) be open to the inspection of any member gratis, and to the inspection of any other person on payment of one shilling, or such less sum as the Company may prescribe, for each inspection.

(2) Any member or other person may require a copy of the register, or any part thereof, or of the list and summary required by this Act, or any part thereof, on payment of sixpence, or such less sum as the Company may prescribe, for every hundred words or fractional part thereof required to be copied.

(3) If any inspection or copy required under this section is refused, the Company shall be liable for each refusal to a fine not exceeding two pounds, and to a further fine not exceeding two pounds for every day during which the refusal continues, and every Director and Manager of the Company who knowingly authorizes or permits the refusal shall be liable to the like penalty; and, as respects Companies registered in England or Ireland, any Judge of the High Court, or the Judge of the Court exercising the Stannaries jurisdiction in the case of Companies subject to that jurisdiction, may by order compel an immediate inspection of the register.

31. A Company may, on giving notice by advertisement in some newspaper circulating in the district in which the registered office of the Company is situate, close

Power to close Register. the register of members for any time or times not exceeding in the whole thirty days in each year.

34.—(1) A Company having a share capital, whose objects comprise the transaction of business in a Colony, may, if so authorized by its Articles, cause to be kept in any Colony in which it transacts business a branch register of members resident in that Colony (in this Act called a colonial register).

Power for Company to keep Colonial Register.

(2) The Company shall give to the Registrar of Companies notice of the situation of the office where any colonial register is kept, and of any change in its situation, and of the discontinuance of the office in the event of its being discontinued.

(3) For the purpose of the provisions of this Act relating

to colonial registers the term "Colony" includes British India and the Commonwealth of Australia.

35.—(1) A colonial register shall be deemed to be part of the Company's register of members (in this and the next following section called the principal register).

Regulations
as to Colonial
Register.

(2) It shall be kept in the same manner in which the principal register is by this Act required to be kept, except that the advertisement before closing the register shall be inserted in some newspaper circulating in the district wherein the colonial register is kept, and that any competent Court in the Colony may exercise the same jurisdiction of rectifying the register as is under this Act exercisable by the High Court, and that the offences of refusing inspection of copies of a colonial register, and of authorizing or permitting the refusal may be prosecuted summarily before any tribunal in the Colony having summary criminal jurisdiction.

(3) The Company shall transmit to its registered office a copy of every entry in its colonial register as soon as may be after the entry is made; and shall cause to be kept at its registered office, duly entered up from time to time, a duplicate of its colonial register, and the duplicate shall, for all the purposes of this Act, be deemed to be part of the principal register.

(4) Subject to the provisions of this section with respect to the duplicate register, the shares registered in a colonial register shall be distinguished from the shares registered in the principal register, and no transaction with respect to any shares registered in a colonial register shall, during the continuance of that registration, be registered in any other register.

(5) The Company may discontinue to keep any colonial register, and thereupon all entries in that register shall be transferred to some other colonial register kept by the Company in the same Colony, or to the principal register.

(6) Subject to the provisions of this Act, any Company may, by its Articles, make such provisions as it may think fit respecting the keeping of colonial registers.

37.—(1) A Company limited by shares, if so authorized by its Articles, may with respect to all fully paid-up shares, or to stock, issue under its common seal a warrant stating that the bearer of the warrant is entitled to the shares or stock therein specified, and may provide, by coupons or otherwise, for the payment of the future dividends on the shares or stock included in the warrant, in this Act termed a share warrant.

Issue and
effect of Share
Warrants to
Bearer.

(2) A share warrant shall entitle the bearer thereof to the shares or stock therein specified, and the shares or stock may be transferred by delivery of the warrant.

3. The bearer of a share warrant shall, subject to the Articles of the Company, be entitled, on surrendering it for cancellation, to have his name entered as a member in the register of members; and the Company shall be responsible for any loss incurred by any person by reason of the Company entering in its register the name of a bearer of a share warrant in respect of the shares or stock therein specified without the warrant being surrendered and cancelled.

(4) The bearer of a share warrant may, if the Articles of the Company so provide, be deemed to be a member of the Company within the meaning of this Act, either to the full extent or for any purposes defined in the Articles; except that he shall not be qualified in respect of the shares or stock specified in the warrant for being a Director or Manager of the Company, in cases where such a qualification is required by the Articles.

(5) On the issue of a share warrant the Company shall strike out of its register of members the name of the member then entered therein as holding the shares or stock specified in the warrant as if he had ceased to be a member, and shall enter in the register the following particulars, namely—

- (i) The fact of the issue of the warrant;
- (ii) A statement of the shares or stock included in the warrant, distinguishing each share by its number; and
- (iii) The date of the issue of the warrant.

(6) Until the warrant is surrendered, the above particulars shall be deemed to be the particulars required by this Act

to be entered in the register of members; and on the surrender, the date of the surrender must be entered as if it were the date at which a person ceased to be a member.

39.—A Company, if so authorized by its Articles, may do any one or more of the following things; namely—

Power of
Company to
arrange for
Different
Amounts
being paid
on Shares.

(1) Make arrangements on the issue of shares for a difference between the shareholders in the amounts and times of payment of calls on their shares:

(2) Accept from any member who assents thereto the whole or a part of the amount remaining unpaid on any shares held by him, although no part of that amount has been called up:

(3) Pay dividend in proportion to the amount paid up on each share where a larger amount is paid up on some shares than on others.

40.—(1) When a Company has accumulated a sum of undivided profits, which with the sanction of the shareholders may be distributed among the shareholders in the form of a dividend or bonus, it may, by special resolution, return the same, or any part thereof, to the shareholders in reduction of the paid-up capital of the Company the unpaid capital being thereby increased by a similar amount.

Power to return
Accumulated
Profits in
reduction of
Paid-up Share
Capital.

(2) The resolution shall not take effect until a memorandum, showing the particulars required by this Act in the case of a reduction of share capital, has been produced to and registered by the Registrar of Companies, but the other provisions of this Act with respect to reduction of share capital shall not apply to a reduction of paid-up share capital under this section.

(3) On a reduction of paid-up capital in pursuance of this section any shareholder, or any one or more of several joint shareholders, may within one month after the passing of the resolution for the reduction, require the Company to retain, and the Company shall retain accordingly, the whole of the money actually paid on the shares held by him either alone

or jointly with any other person, which, in consequence of the reduction, would otherwise be returned to him or them, and thereupon those shares shall, as regards the payment of dividend, be deemed to be paid up to the same extent only as the shares on which payment has been accepted by the shareholders in reduction of paid-up capital, and the Company shall invest and keep invested the money so retained in such securities authorized for investment by trustees as the Company may determine, and on the money so invested or on so much thereof as from time to time exceeds the amount of calls subsequently made on the shares in respect of which it has been retained, the Company shall pay the interest received from time to time on the securities.

(4) The amount retained and invested shall be held to represent the future calls which may be made to replace the share capital so reduced on those shares, whether the amount obtained on sale of the whole or such proportion thereof as represents the amount of any call when made produces more or less than the amount of the call.

(5) On a reduction of paid-up share capital in pursuance of this section, the powers vested in the Directors of making calls on shareholders in respect of the amount unpaid on their shares shall extend to the amount of the unpaid share capital as augmented by the reduction.

(6) After any reduction of share capital under this section the Company shall specify in the annual list of members required by this Act the amounts retained at the request of any of the shareholders in pursuance of this section, and shall specify in the statements of account laid before any general meeting of the Company the amount of undivided profits returned in reduction of paid-up share capital under this section.

The Directors of a Company resolved to distribute accumulated profits as a bonus dividend of fifty per cent. on the capital paid up, the dividend to be payable on the 6th of September, 1890. The dividend was, at the option of the shareholders, payable in cash, or applicable to the payment of the amount then due in respect of new shares or of calls. The old shares were £10 shares, some fully paid up or with £7 10s. paid up, in the proportion of one new

share for every two old shares paid up, and one new share for every eight old shares with £7 10s. paid up. A call of £2 10s. per share was to be made at the same time on such of the shares as were not fully paid up. The trustee of a will who held 150 old shares fully paid up (the tenant for life consenting, without prejudice to his rights to treat the dividend as income) accepted seventy-five new shares in lieu of the £750 bonus dividend on the 150 shares. The shares were sold for £1,363. The tenant for life claimed £750 out of the purchase money on the ground that it was income; he did not dispute that the balance was capital.

It was held that the £750 was income, on the ground that the declaration of the bonus dividend and the issue of the new shares were two distinct transactions and not one transaction, as in *Bouch v. Sproule*, 12 A.C. 385, the shareholders having the option of taking the dividend in cash without taking up the new shares. —*In re Northage; Ellis v. Barfield*, (1891) 60 L.J. (New Series) 488.

A Company had an issued capital of 40,000 preference shares of £5 each fully paid and 60,000 ordinary shares of £5 each, of which 6,047 were fully paid, and the residue were only paid to the extent of £1 a share. By the Articles of Association dividends were paid in proportion to the amount paid up on the shares. The Company had paid dividends of 10 per cent. on the amounts paid up on the ordinary shares and had accumulated a very large reserve fund consisting of undivided profits. A special resolution was duly passed and confirmed "That out of the accumulated profits of the Company the sum of £4 per share be paid to the holders of 6,047 fully-paid ordinary shares of the Company by way of reduction of capital pursuant to Section 40 of the Companies (Consolidation) Act, 1908"—

Held, that that section could not be construed as authorizing the return of capital to the whole class of shareholders among whom the accumulated profits were divisible, and therefore the resolution was not *ultra vires*.—*Neale v. City of Birmingham Tramways Company* [1910], 2 Ch. 464.

41.—(1) A Company limited by shares, if so authorized by its Articles, may alter the conditions of its Memorandum

Power of Company limited by Shares to alter its share Capital.	as follows (that is to say), it may— (a) increase its share capital by the issue of new shares of such amount as it thinks expedient; (b) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares;
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(c) convert all or any of its paid-up shares into stock, and reconvert that stock into paid-up shares of any denomination ;

(d) subdivide its shares, or any of them, into shares of smaller amount than is fixed by the Memorandum, so, however, that in the subdivision the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived ;

(e) cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled.

(2) The powers conferred by this section with respect to subdivision of shares must be exercised by special resolution.

(3) Where any alteration has been made under this section in the Memorandum of a Company, every copy of the Memorandum issued after the date of the alteration shall be in accordance with the alteration.

If a Company makes default in complying with this provision it shall be liable to a fine not exceeding one pound for each copy in respect of which default is made ; and every Director and Manager of the Company who knowingly and wilfully authorizes or permits the default shall be liable to the like penalty.

(4) A cancellation of shares in pursuance of this section shall not be deemed to be a reduction of share capital within the meaning of this Act.

42. Where a Company having a share capital has consolidated and divided its share capital into shares of larger amount than its existing shares, or converted any of its shares into stock, or reconverted stock into shares, it shall give notice to the Registrar of Companies of the consolidation, division, conversion, or reconversion, specifying the shares consolidated, divided, or converted, or the stock reconverted.

Notice to
Registrar of
Consolidation
of Share
Capital,
Conversion of
Shares into
Stock, etc.

43. Where a Company having a share capital has

converted any of its shares into stock, and given notice of the conversion to the Registrar of Companies, all the provisions of this Act which are applicable to shares only shall cease as to so much of the share capital as is converted into stock; and the register of members of the Company, and the list of members to be forwarded to the Registrar, shall show the amount of stock held by each member instead of the amount of shares and the particulars relating to shares hereinbefore required by this Act.

44.—(1) Where a Company having a share capital, whether its shares have or have not been converted into stock, has increased its share capital beyond the registered capital, and where a Company not having a share capital has increased the number of its members beyond the registered number, it shall give to the Registrar of Companies, in the case of an increase of share capital, within fifteen days after the passing, or in the case of a special resolution the confirmation, of the resolution authorizing the increase, and in the case of an increase of members within fifteen days after the increase was resolved on or took place, notice of the increase of capital or members, and the Registrar shall record the increase.

(2) If a Company makes default in complying with the requirements of this section it shall be liable to a fine not exceeding five pounds for every day during which the default continues, and every Director and Manager of the Company who knowingly and wilfully authorizes or permits the default shall be liable to the like penalty.

45.—(1) A Company limited by shares may, by special resolution confirmed by an Order of the Court, modify the conditions contained in its Memorandum so as to reorganize its share capital, whether by the consolidation of shares of different classes or by the division of its shares into shares of different classes:

Provided that no preference or special privilege attached to or belonging to any class of shares shall be interfered with except by a resolution passed by a majority in number of

shareholders of that class holding three-fourths of the share capital of that class and confirmed at a meeting of shareholders of that class in the same manner as a special resolution of the Company is required to be confirmed, and every resolution so passed shall bind all shareholders of the class.

(2) Where an order is made under this section an office copy thereof shall be filed with the Registrar of Companies within seven days after the making of the order, or within such further time as the Court may allow, and the resolution shall not take effect until such a copy has been so filed.

This section is confined to two modes of reorganizing share capital, namely (a) by the consolidation of shares of different classes and (b) by the division of shares into shares of different classes.—*In re Palace Hotel, Ltd.* [1912], 2 Ch. 438.

46.—(1) Subject to confirmation by the Court, a Company limited by shares, if so authorized by its Articles, may by special resolution reduce its share capital in any way, and in particular (without prejudice to the generality of the foregoing power) may—

(a) Extinguish or reduce the liability on any of its shares in respect of share capital not paid

Special
Resolution
for Reduction
of Share
Capital.

up; or

(b) Either with or without extinguishing or reducing liability on any of its shares, cancel any paid-up share capital which is lost or unrepresented by available assets; or

(c) Either with or without extinguishing or reducing liability on any of its shares, pay off any paid-up share capital which is in excess of the wants of the Company, and may, if and so far as is necessary, alter its Memorandum by reducing the amount of its share capital and of its shares accordingly.

(2) A special resolution under this section is in this Act called a resolution for reducing share capital.

The power must be conferred by the Articles and not by the Memorandum.—*In re Dexine Rubber Co.* [1903], W.N. 82.

A surrender of shares to a limited Company, not involving any

reduction of capital and not amounting to a purchase of its own shares by the Company, is not necessarily *ultra vires*.

In 1896, pursuant to Articles of Association and special resolution, the holders of 6 per cent. fully-paid preference shares surrendered the same to the Company in exchange for fully-paid 5 per cent. preference shares, and a contract in writing was duly filed with the Registrar of Joint Stock Companies, pursuant to Section 25 of the Companies Act, 1867. The surrendered shares were not cancelled, but were subject to be reissued by the company.

Held, that the surrender not involving any reduction of capital was valid ; that the transaction did not amount to a purchase by the Company of its own shares ; and that the new shares issued in exchange were fully paid up.—*Rowell v. John Rowell & Sons, Ltd.* [1912], 2 Ch. 610.

51.—(1) The Registrar of Companies on production to him of an Order of the Court confirming the reduction of the share capital of a Company, and the delivery to him of a copy of the Order and of a Minute (approved by the Court), showing with respect to the share capital of the Company, as altered by the Order, the amount of the share capital, the number of shares into which it is to be divided, and the amount of each share, and the amount (if any) at the date of the registration deemed to be paid up on each share, shall register the Order and Minute.

Registration
of Order and
Minute of
Reduction.

(2) On the registration, and not before, the resolution for reducing share capital as confirmed by the Order so registered shall take effect.

52.—(1) The minute when registered shall be deemed to be substituted for the corresponding part of the Memorandum of the Company, and shall be valid and alterable as if it had been originally contained therein ; and must be embodied in every copy of the Memorandum issued after its registration.

Minute to
form part of
Memorandum.

(2) If a Company makes default in complying with the requirements of this section it shall be liable to a fine not exceeding one pound for each copy in respect of which default is made, and every Director and Manager of the Company who knowingly and wilfully authorizes or permits the default shall be liable to the like penalty.

56. A Company limited by guarantee and registered on or after the first day of January, nineteen hundred and one, may, if it has a share capital, and is so authorized by its Articles, increase or reduce its share capital in the same manner and subject to the same conditions in and subject to which a Company limited by shares may increase or reduce its share capital under the provisions of this Act.

Increase and reduction of Share Capital in case of a Company limited by guarantee having a Share Capital.

58. An unlimited Company having a share capital may, by its resolution for registration as a limited Company in pursuance of this Act, do either or both of the following things, namely—

Power of unlimited Company to provide for reserve Share Capital on re-registration.

(a) Increase the nominal amount of its share capital by increasing the nominal amount of each of its shares, but subject to the condition that no part of the increased capital shall be capable of being called up except in the event and for the purposes of the Company being wound up ;

(b) Provide that a specified portion of its uncalled share capital shall not be capable of being called up except in the event and for the purposes of the Company being wound up.

59. A limited Company may by special resolution determine that any portion of its share capital which has not been already called up shall not be capable of being called up except in the event and for the purposes of the Company being wound up, and thereupon that portion of its share capital shall not be capable of being called up except in the event and for the purposes aforesaid.

Reserve liability of limited Company.

A Company has no power to create any charge on that portion of its capital which, in accordance with a resolution passed under this section, can only be called up “ in the event of and for the purposes of the Company being wound up.”—*In re Mayfair Property Co.* ; *Bartlett v. Mayfair Property Co.* [1898], 2 Ch. 28 ; *In re Irish Club Co., Ltd.* [1906], W.N. 127.

64.—(1) A general meeting of every Company shall be held once at the least in every calendar year, and not more than fifteen months after the holding of the last preceding general meeting, and, if not so held, the Company and every Director, Manager, Secretary, and other Officer of the Company who is knowingly a party to the default, shall be liable to a fine not exceeding fifty pounds.

Annual General Meeting.

(2) When default has been made in holding a meeting of the Company in accordance with the provisions of this section, the Court may, on the application of any member of the Company, call or direct the calling of a general meeting of the Company.

Every calendar year means a year from 1st January to 31st December.—*Gibson v. Barton*, 10 Q.B. 329; *Edmonds v. Foster*, 33 L.T. 690.

It is at this meeting that the Accounts are laid before the shareholders, and the Auditors for the ensuing year are appointed (Sections 112, 113).

65.—(1) Every Company limited by shares and registered on or after the first day of January, nineteen hundred and one, shall, within a period of not less than one month nor more than three months from the date at which the Company is entitled to commence business, hold a general meeting of the members of the Company, which shall be called the statutory meeting.

First Statutory Meeting of Company.

(2) The Directors shall, at least seven days before the day on which the meeting is held, forward a report (in this Act called the "statutory report") to every member of the Company and to every other person entitled under this Act to receive it.

(3) The statutory report shall be certified by not less than two Directors of the Company, or, where there are less than two Directors, by the sole Director and Manager, and shall state—

(a) the total number of shares allotted, distinguishing shares allotted as fully or partly paid up otherwise than in cash, and stating in the case of shares partly paid

up, the extent to which they are so paid up, and in either case the consideration for which they have been allotted ;

(b) the total amount of cash received by the Company in respect of all the shares allotted, distinguished as aforesaid ;

(c) an abstract of the receipts of the Company on account of its capital, whether from shares or debentures, and of the payments made thereout, up to a date within seven days of the date of the report, exhibiting under distinctive headings the receipts of the Company from shares and debentures and other sources, the payments made thereout, and particulars concerning the balance remaining in hand, and an account or estimate of the preliminary expenses of the Company ;

(d) the names, addresses, and descriptions of the Directors, Auditors (if any), Managers (if any), and Secretary of the Company ; and

(e) the particulars of any contract, the modification of which is to be submitted to the meeting for its approval together with the particulars of the modification or proposed modification.

(4) The statutory report shall, so far as it relates to the shares allotted by the Company, and to the cash received in respect of such shares, and to the receipts and payments of the Company on capital account, be certified as correct by the Auditors, if any, of the Company.

(5) The Directors shall cause a copy of the statutory report, certified as by this section required, to be filed with the Registrar of Companies forthwith after the sending thereof to the members of the Company.

(10) The provisions of this section as to the forwarding and filing of the statutory report shall not apply in the case of a private Company.

(3).—(a) When two or more classes of shares have been issued it does not appear necessary to make any distinction between them, and that it is sufficient to state “the total number of shares allotted.”

71.—(1) Every Company shall cause minutes of all proceedings of general meetings and (where there are Directors or Managers) of its Directors or Managers to be entered in books kept for that purpose.

Minutes of
Proceedings
of Meetings
and Directors.

(2) Any such minute if purporting to be signed by the Chairman of the meeting at which the proceedings were had, or by the Chairman of the next succeeding meeting, shall be evidence of the proceedings.

The books containing these minutes are known as "Minute Books." In large Companies it is the practice to keep separate "Minute Books" for meetings of the Directors, for meetings of Committees of the Directors, and for meetings of Shareholders respectively. These "Minute Books" are, it is conceived, open to the inspection of the Auditor should he, in the performance of his duties, consider such an inspection desirable.

A clause giving a right of inspection of "the books wherein the proceedings of the Company are recorded" does not give a shareholder the right to inspect the books of minutes of the proceedings of the Directors.—*Reg. v. Mariquita Company*, 1 E. & E. 289.

72.—(1) A person shall not be capable of being appointed Director of a Company by the Articles, and shall not be named as a Director or proposed Director of a Company in any prospectus issued by or on behalf of the Company, or in any statement in lieu of prospectus filed by or on behalf of a Company, unless, before the registration of the Articles or the publication of the prospectus or the filing of the statement in lieu of prospectus, as the case may be, he has by himself or by his agent authorized in writing—

Restrictions on
Appointment or
Advertisement
of Director.

(i) Signed and filed with the Registrar of Companies a consent in writing to act as such Director; and

(ii) Either signed the Memorandum for a number of shares not less than his qualification (if any), or signed and filed with the Registrar a contract in writing to take from the Company and pay for his qualification shares (if any).

(2) On the application for registration of the Memorandum and Articles of a Company the applicant shall deliver

to the Registrar a list of the persons who have consented to be Directors of the Company, and, if this list contains the name of any person who has not so consented, the applicant shall be liable to a fine not exceeding fifty pounds.

(3) This section shall not apply to a private Company nor to a prospectus issued by or on behalf of a Company after the expiration of one year from the date at which the Company is entitled to commence business.

By Section 285 Prospectus means any prospectus, notice, circular, advertisement, or other invitation, offering to the public for subscription or purchase any shares or debentures of a Company.

For definition of "private" Company *see* Section 121.

73.—(1) Without prejudice to the restrictions imposed by the last foregoing section, it shall be the duty of every Director who is by the regulations of the Qualification
of Director. Company required to hold a specified share qualification, and who is not already qualified to obtain his qualification within two months after his appointment, or such shorter time as may be fixed by the regulations of the Company.

(2) The office of Director of a Company shall be vacated if the Director does not within two months from the date of his appointment, or within such shorter time as may be fixed by the regulations of the Company, obtain his qualification, or if after the expiration of such period or shorter time he ceases at any time to hold his qualification; and a person vacating office under this section shall be incapable of being reappointed Director of the Company until he has obtained his qualification.

(3) If after the expiration of the said period or shorter time any unqualified person acts as a Director of the Company, he shall be liable to a fine not exceeding five pounds for every day between the expiration of the said period or shorter time and the last day on which it is proved that he acted as a Director.

This section applies to a Director only if the Articles require him to hold a specified share qualification, as by the Act it is not obligatory on a director to hold even a single share.

The restrictions referred to in Section 2 relate to the mode of Appointment of Directors.

Although not compulsory upon him it would be very proper for an Auditor to mention in his Report the fact that a person was acting as a Director who had not complied with the provisions of this section as to qualification.

Subject to Sec. 72 and to the Articles of Association, qualification may be properly obtained either by taking the shares from the Company or acquiring them by transfer.—*Browne's Case*, 9 Ch. 102.

In the absence of special provision in the Articles, a Director who is the registered holder of the required qualification shares is qualified even though he holds them merely as trustee for some other person.—*Pulbrook v. Richmond Consolidated Co.*, 9 C.D. 610 ; *Bainbridge v. Smith*, 41 C.D. 462.

A Director is duly qualified if he is one of several joint holders of the required qualification.—*In re Glory Paper Mills ; Dunster's Case* [1894], 3 Ch. 473.

74. The acts of a Director or Manager shall be valid notwithstanding any defect that may afterwards be discovered in his appointment or qualification.

Validity of Acts
of Directors.

75.—(1) Every Company shall keep at its registered office a register containing the names and addresses and the occupations of its Directors or Managers, and send to the Registrar of Companies a copy thereof, and from time to time notify to the Registrar any change among its Directors or Managers.

List of
Directors to
be sent to
Registrar.

(2) If default is made in compliance with this section, the Company shall be liable to a fine not exceeding five pounds for every day during which the default continues ; and every Director and Manager of the Company who knowingly and wilfully authorizes or permits the default shall be liable to the like penalty.

81.—(1) Every prospectus issued by or on behalf of a Company, or by or on behalf of any person who is or has been engaged or interested in the formation of the Company, must state—

Specific
requirements
as to
particulars of
Prospectus.

(a) The contents of the Memorandum, with the names, descriptions, and addresses of the signatories, and the number of shares subscribed for by them respectively ; and the number of

founders or management or deferred shares, if any, and the nature and extent of the interest of the holders in the property and profits of the company ; and

(b) the number of shares, if any, fixed by the Articles as the qualification of a Director, and any provision in the Articles as to the remuneration of the Directors ; and

(c) the names, descriptions, and addresses of the Directors or proposed Directors ; and

(d) the minimum subscription on which the Directors may proceed to allotment, and the amount payable on application and allotment on each share ; and in the case of a second or subsequent offer of shares, the amount offered for subscription on each previous allotment made within the two preceding years, and the amount actually allotted, and the amount, if any, paid on the shares so allotted ; and

(e) the number and amount of shares and debentures which within the two preceding years have been issued, or agreed to be issued, as fully or partly paid up otherwise than in cash, and in the latter case the extent to which they are so paid up, and in either case the consideration for which those shares or debentures have been issued or are proposed or intended to be issued ; and

(f) the names and addresses of the vendors of any property purchased or acquired by the Company, or proposed so to be purchased or acquired, which is to be paid for wholly or partly out of the proceeds of the issue offered for subscription by the prospectus, or the purchase or acquisition of which has not been completed at the date of issue of the prospectus, and the amount payable in cash, shares, or debentures, to the vendor, and where there is more than one separate vendor, or the Company is sub-purchaser, the amount so payable to each vendor : Provided that where the vendors, or any of them, are a firm the members of the firm shall not be treated as separate vendors ; and

(g) the amount (if any) paid or payable as purchase

money in cash, shares, or debentures, for any such property as aforesaid, specifying the amount (if any) payable for goodwill; and

(*h*) the amount (if any) paid within the two preceding years, or payable, as commission for subscribing or agreeing to subscribe, or procuring or agreeing to procure subscriptions, for any shares in, or debentures of, the Company, or the rate of any such commission: Provided that it shall not be necessary to state the commission payable to sub-underwriters; and

(*i*) the amount or estimated amount of preliminary expenses; and

(*j*) the amount paid within the two preceding years or intended to be paid to any promoter, and the consideration for any such payment; and

(*k*) the dates and parties to every material contract, and a reasonable time and place at which any material contract or a copy thereof may be inspected: Provided that this requirement shall not apply to a contract entered into in the ordinary course of the business carried on or intended to be carried on by the Company, or to any contract entered into more than two years before the date of issue of the prospectus; and

(*l*) the names and addresses of the Auditors (if any) of the Company; and

(*m*) full particulars of the nature and extent of the interest (if any) of every Director in the promotion of, or in the property proposed to be acquired by, the Company, or, where the interest of such a Director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares or otherwise by any person either to induce him to become, or to qualify him as, a Director, or, otherwise for services rendered by him or by the firm in connection with the promotion or formation of the Company; and

(*n*) where the Company is a Company having shares of more than one class, the right of voting at meetings of

the Company conferred by the several classes of shares respectively.

(2) For the purposes of this section every person shall be deemed to be a vendor who has entered into any contract, absolute or conditional, for the sale or purchase, or for any option of purchase, of any property to be acquired by the Company, in any case where—

(a) the purchase money is not fully paid at the date of issue of the prospectus; or

(b) the purchase money is to be paid or satisfied wholly or in part out of the proceeds of the issue offered for subscription by the prospectus; or

(c) the contract depends for its validity or fulfilment on the result of that issue.

(3) Where any of the property to be acquired by the Company is to be taken on lease, this section shall apply as if the expression “vendor” included the lessor, and the expression “purchase money” included the consideration for the lease, and the expression “sub-purchaser” included a sub-lessee.

(4) Any condition requiring or binding any applicant for shares or debentures to waive compliance with any requirement of this section, or purporting to affect him with notice of any contract, document, or matter not specifically referred to in the prospectus, shall be void.

(5) Where any such prospectus as is mentioned in this section is published as a newspaper advertisement, it shall not be necessary in the advertisement to specify the contents of the Memorandum or the signatories thereto, and the number of shares subscribed for by them.

(6) In the event of non-compliance with any of the requirements of this section, a Director or other person responsible for the prospectus shall not incur any liability by reason of the non-compliance, if he proves that—

(a) as regards any matter not disclosed, he was not cognizant thereof; or

(b) the non-compliance arose from an honest mistake of fact on his part:

Provided that in the event of non-compliance with the requirements contained in paragraph (m) of Sub-section (1) of this section no Director or other person shall incur any liability in respect of the non-compliance unless it be proved that he had knowledge of the matters not disclosed.

(7) This section shall not apply to a circular or notice inviting existing members or debenture-holders of a Company to subscribe either for shares or for debentures of the Company, whether with or without the right to renounce in favour of other persons, but, subject as aforesaid, this section shall apply to any prospectus, whether issued on or with reference to the formation of a Company or subsequently.

(8) The requirements of this section as to the Memorandum and the qualification, remuneration, and interest of Directors, the names, descriptions, and addresses of Directors or proposed Directors, and the amount or estimated amount of preliminary expenses, shall not apply in the case of a prospectus issued more than one year after the date at which the Company is entitled to commence business.

(9) Nothing in this section shall limit or diminish any liability which any person may incur under the general law or this Act apart from this section.

82.—(1) A Company which does not issue a prospectus on or with reference to its formation, shall not allot any of its shares or debentures unless before the first

Obligations
of Companies
where no
Prospectus
is issued.

allotment of either shares or debentures there has been filed with the Registrar of Companies a statement in lieu of prospectus signed by every person who is named therein as a Director or a proposed Director of the Company or by his agent authorized in writing, in the form and containing the particulars set out in the Second Schedule to this Act.

(2) This section shall not apply to a private Company or to a Company which has allotted any shares or debentures before the first day of July, nineteen hundred and eight.

For definition of private Company, see Section 121.

83. A Company shall not previously to the statutory meeting vary the terms of a contract referred to in the prospectus or statement in lieu of prospectus, except subject to the approval of the statutory meeting.

Restriction
on alteration
of terms
mentioned in
Prospectus
or statement
in lieu of
Prospectus.

Having regard to Section 65, this section apparently applies only to Companies limited by shares.

84.—(1) Where a prospectus invites persons to subscribe for shares in or debentures of a Company, every person who is a Director of the Company at the time of the issue of the prospectus, and every person who has authorized the naming of him and is named in the prospectus as a Director, or as having agreed to become a Director either immediately or after an interval of time, and every promoter of the Company, and every person who has authorized the issue of the prospectus, shall be liable to pay compensation to all persons who subscribe for any shares or debentures on the faith of the prospectus for the loss or damage they may have sustained by reason of any untrue statement therein, or in any report or memorandum appearing on the face thereof, or by reference incorporated therein or issued therewith, unless it is proved—

Liability for
Statements in
Prospectus.

(a) With respect to every untrue statement not purporting to be made on the authority of an expert, or of a public official document or statement, that he had reasonable ground to believe, and did up to the time of the allotment of the shares or debentures, as the case may be, believe, that the statement was true; and

(b) With respect to every untrue statement purporting to be a statement by or contained in what purports to be a copy of or extract from a report or valuation of an expert, that it fairly represented the statement, or was a correct and fair copy of or extract from the report or valuation. Provided that the Director, person named as Director, promoter, or person who authorized the issue of the prospectus, shall be liable to pay compensation as aforesaid if it is proved that he had no reasonable ground to believe

that the person making the statement, report, or valuation was competent to make it ; and

(c) With respect to every untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document, that it was a correct and fair representation of the statement or copy of or extract from the document :

or unless it is proved—

(i) that having consented to become a Director of the Company he withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent ; or

(ii) that the prospectus was issued without his knowledge or consent, and that on becoming aware of its issue he forthwith gave reasonable public notice that it was issued without his knowledge or consent ; or

(iii) that after the issue of the prospectus and before allotment thereunder, he, on becoming aware of any untrue statement therein, withdrew his consent thereto, and gave reasonable public notice of the withdrawal, and of the reason therefor.

(2) Where a Company existing on the eighteenth day of August, one thousand eight hundred and ninety, has issued shares or debentures, and for the purpose of obtaining further capital by subscriptions for shares or debentures issues a prospectus, a Director shall not be liable in respect of any statement therein, unless he has authorized the issue of the prospectus, or has adopted or ratified it.

(3) Where the prospectus contains the name of a person as a Director of the Company, or as having agreed to become a Director thereof, and he has not consented to become a Director, or has withdrawn his consent before the issue of the prospectus, and has not authorized or consented to the issue thereof, the Directors of the Company, except any without whose knowledge or consent the prospectus was issued, and any other person who authorized the issue thereof, shall be liable to indemnify the person named as aforesaid against all

damages, costs, and expenses to which he may be made liable by reason of his name having been inserted in the prospectus, or in defending himself against any action or legal proceedings brought against him in respect thereof.

(4) Every person who by reason of his being a Director or named as a Director or as having agreed to become a Director, or of his having authorized the issue of the prospectus, becomes liable to make any payment under this section may recover contribution, as in cases of contract, from any other person who, if sued separately, would have been liable to make the same payment, unless the person who has become so liable was, and that other person was not, guilty of fraudulent misrepresentation.

(5) For the purposes of this section—

The expression “promoter” means a promoter who was a party to the preparation of the prospectus, or of the portion thereof containing the untrue statement, but does not include any person by reason of his acting in a professional capacity for persons engaged in procuring the formation of the company:

The expression “expert” includes engineer, valuer, accountant, and any other person whose profession gives authority to a statement made by him.

It is the recognized practice among professional Accountants that before they allow their names to be placed upon a prospectus as Auditors to the proposed Company, the prospectus shall be submitted to them for the purpose of their ascertaining that it does not contain any statement which to their knowledge is untrue.

Should an Auditor named in a prospectus which contains to his knowledge an untrue statement authorize it to be issued, he will be liable under this section. As stated in Chapter I, Counsel gave an opinion to the Institute of Chartered Accountants that a Chartered Accountant does not authorize the issue of a prospectus or notice within the meaning of the Act by merely permitting his name to be mentioned in the prospectus or notice as Auditor.

When the Auditor named in the prospectus has given a certificate of the profits of a business, to acquire which business the Company has been formed, he gives this certificate not as Auditor, but as an “expert” as defined in this section.

The liability of Directors, Promoters, and others, under

Sub-section 1, to pay compensation to subscribers for Shares or Debentures for loss or damage sustained by untrue statements in Prospectuses or Reports is a liability in tort, and an action in respect of such liability does not lie against the executor of the tortfeasor unless by the latter's tortious act property or the proceeds or value of property belonging to the person injured have been added to the tortfeasor's estate.—*Geipel v. Peach* [1917], 2 Ch. 108.

85.—(1) No allotment shall be made of any share capital of a Company offered to the public for subscription, unless the following conditions have been complied with, namely—

Restriction as
to Allotment.

(a) the amount (if any) fixed by the Memorandum or Articles and named in the prospectus as the minimum subscription upon which the Directors may proceed to allotment; or

(b) if no amount is so fixed and named, then the whole amount of the share capital so offered for subscription, has been subscribed, and the sum payable on application for the amount so fixed and named, or for the whole amount offered for subscription, has been paid to and received by the Company.

(2) The amount so fixed and named and the whole amount aforesaid shall be reckoned exclusively of any amount payable otherwise than in cash, and is in this Act referred to as the minimum subscription.

(3) The amount payable on application on each share shall not be less than five per cent. of the nominal amount of the share.

(4) If the conditions aforesaid have not been complied with on the expiration of forty days after the first issue of the prospectus, all money received from applicants for shares shall be forthwith repaid to them without interest.

(6) This section, except Sub-section (3) thereof, shall not apply to any allotment of shares subsequent to the first allotment of shares offered to the public for subscription.

(7) In the case of the first allotment of share capital payable in cash of a Company which does not issue any invitation to the public to subscribe for its shares, no allotment shall be made unless the minimum subscription (that is to say)—

(a) the amount (if any) fixed by the Memorandum or Articles and named in the statement in lieu of prospectus as the minimum subscription upon which the Directors may proceed to allotment; or

(b) if no amount is so fixed and named, then the whole amount of the share capital other than that issued or agreed to be issued as fully or partly paid up otherwise than in cash,

has been subscribed and an amount not less than five per cent of the nominal amount of each share payable in cash has been paid to and received by the Company.

This sub-section shall not apply to a private Company or to a Company which has allotted any shares or debentures before the first day of July, nineteen hundred and eight.

The section relates only to the allotment of share capital, and not to the allotment of debentures or debenture stock.

87.—(1) A Company shall not commence any business or exercise any borrowing powers unless—

Restrictions on commencement of Business. (a) shares held subject to the payment of the whole amount thereof in cash have been allotted to an amount not less in the whole than the minimum subscription; and

(b) every Director of the Company has paid to the Company on each of the shares taken or contracted to be taken by him, and for which he is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares offered for public subscription, or in the case of a Company which does not issue a prospectus inviting the public to subscribe for its shares, on the shares payable in cash; and

(c) there has been filed with the Registrar of Companies a statutory declaration by the Secretary or one of the Directors, in the prescribed form, that the aforesaid conditions have been complied with; and

(d) in the case of a Company which does not issue a prospectus inviting the public to subscribe for its shares, there has been filed with the Registrar of Companies a statement in lieu of prospectus.

(2) The Registrar of Companies shall, on the filing of this statutory declaration, certify that the Company is entitled to commence business, and that certificate shall be conclusive evidence that the Company is so entitled :

Provided that in the case of a Company which does not issue a prospectus inviting the public to subscribe for its shares the Registrar shall not give such a certificate unless a statement in lieu of prospectus has been filed with him.

(3) Any contract made by a Company before the date at which it is entitled to commence business shall be provisional only, and shall not be binding on the Company until that date, and on that date it shall become binding.

(4) Nothing in this section shall prevent the simultaneous offer for subscription or allotment of any shares and debentures or the receipt of any money payable on application for debentures.

(5) If any Company commences business or exercises borrowing powers in contravention of this section, every person who is responsible for the contravention shall, without prejudice to any other liability, be liable to a fine not exceeding fifty pounds for every day during which the contravention continues.

(6) Nothing in this section shall apply to a private Company, or to a Company registered before the first day of January, nineteen hundred and one, or to a Company registered before the first day of July, nineteen hundred and eight, which does not issue a prospectus inviting the public to subscribe for its shares.

88.—(1) Whenever a Company limited by shares makes any allotment of its shares, the Company shall within one month thereafter file with the Registrar of Companies—

Return as to
Allotments.

(a) a return of the allotments, stating the number and nominal amount of the shares comprised in the allotment, the names, addresses, and descriptions of the allottees, and the amount (if any) paid or due and payable on each share ; and

(b) in the case of shares allotted as fully or partly paid

up otherwise than in cash, a contract in writing constituting the title of the allottee to the allotment, together with any contract of sale, or for services or other consideration in respect of which that allotment was made, such contracts being duly stamped, and a return stating the number and nominal amount of shares so allotted, the extent to which they are to be treated as paid up, and the consideration for which they have been allotted.

(2) Where such a contract as above mentioned is not reduced to writing, the Company shall within one month after the allotment file with the Registrar of Companies the prescribed particulars of the contract stamped with the same stamp duty as would have been payable if the contract had been reduced to writing, and those particulars shall be deemed to be an instrument within the meaning of the Stamp Act, 1891, and the Registrar may, as a condition of filing the particulars, require that the duty payable thereon be adjudicated under section twelve of that Act.

54 & 55 Vict.
c. 39.

(3) If default is made in complying with the requirements of this Section, every Director, Manager, Secretary, or other Officer of the Company, who is knowingly a party to the default, shall be liable to a fine not exceeding fifty pounds for every day during which the default continues :

Provided that, in case of default in filing with the Registrar of Companies within one month after the allotment any document required to be filed by this section, the Company, or any person liable for the default, may apply to the Court for relief, and the Court, if satisfied that the omission to file the document was accidental or due to inadvertence or that it is just and equitable to grant relief, may make an order extending the time for the filing of the document for such period as the Court may think proper.

It does not fall within an Auditor's duty to satisfy himself that documents which ought to be filed with the Registrar of Joint Stock Companies have been so filed ; but, should he knowingly be a party to the default referred to, he runs the risk of being judicially held to be an " Officer " under this section.

“ Knowingly ” means “ knowing the facts,” and a man commits the offence if he knows of the allotment, or knows of the contract, and does not procure compliance with this section.—*Twycross v. Grant*, 2 C.P. Div. 469.

89.—(1) It shall be lawful for a Company to pay a commission to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares in the Company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the Company, if the payment of the commission is authorized by the Articles, and the commission paid or agreed to be paid does not exceed the amount or rate so authorized, and if the amount or rate per cent of the commission paid or agreed to be paid is—

Power to pay
certain Com-
missions, and
Prohibition of
Payment
of all other
Commissions,
Discounts, etc.

(a) In the case of shares offered to the public for subscription, disclosed in the prospectus ; or

(b) In the case of shares not offered to the public for subscription, disclosed in the statement in lieu of prospectus, or in a statement in the prescribed form signed in like manner as a statement in lieu of prospectus and filed with the Registrar of Companies, and, where a circular or notice, not being a prospectus, inviting subscription for the shares is issued, also disclosed in that circular or notice.

(2) Save as aforesaid, no Company shall apply any of its shares or capital money either directly or indirectly in payment of any commission, discount, or allowance, to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares of the Company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the Company, whether the shares or money be so applied by being added to the purchase money of any property acquired by the Company or to the contract price of any work to be executed for the Company, or the money be paid out of the nominal purchase money or contract price, or otherwise.

(3) Nothing in this section shall affect the power of any Company to pay such brokerage as it has heretofore been lawful for a Company to pay, and a vendor to, promoter of, or other person who receives payment in money or shares from, a Company shall have and shall be deemed always to have had power to apply any part of the money or shares so received in payment of any commission, the payment of which, if made directly by the Company, would have been legal under this section.

Commission paid under this section must be set out as a separate item on the Credit side of the Balance Sheet, and may not be included under "Preliminary Expenses." See next section.

The payment by a Limited Company of a reasonable amount of money to Brokers by way of commission or brokerage for placing shares is not an act *ultra vires* the Company.—*Metropolitan Coal Consumers' Association v. Scrimgeour* [1895], 2 Q.B. 604.

This section applies as well to Private as to Public Companies.—*Dominion of Canada General Trading and Investment Syndicate v. Brigstocke* [1911], 2 K.B. 648.

90. Where a Company has paid any sums by way of commission in respect of any shares or debentures, or allowed any sums by way of discount in respect of any debentures, the total amount so paid or allowed, or so much thereof as has not been written off, shall be stated in every balance sheet of the Company until the whole amount thereof has been written off.

Statement in
Balance
Sheet as to
Commissions
and Discounts.

91. Where any shares of a Company are issued for the purpose of raising money to defray the expenses of the construction of any works or buildings or the provision of any plant which cannot be made profitable for a lengthened period, the Company may pay interest on so much of that share capital as is for the time being paid up for the period and subject to the conditions and restrictions in this section mentioned, and may charge the same to capital as part of the cost of construction of the work or building, or the provision of plant :

Power of
Company to
pay Interest
out of Capital
in certain
cases.

Provided that—

(1) No such payment shall be made unless the same is authorized by the Articles or by special resolution :

(2) No such payment, whether authorized by the Articles or by special resolution, shall be made without the previous sanction of the Board of Trade :

(3) Before sanctioning any such payment the Board of Trade may, at the expense of the Company, appoint a person to inquire and report to them as to the circumstances of the case, and may, before making the appointment, require the Company to give security for the payment of the costs of the inquiry :

(4) The payment shall be made only for such period as may be determined by the Board of Trade ; and such period shall in no case extend beyond the close of the half-year next after the half-year during which the works or buildings have been actually completed or the plant provided :

(5) The rate of interest shall in no case exceed four per centum per annum, or such lower rate as may for the time being be prescribed by Order in Council :

(6) The payment of the interest shall not operate as a reduction of the amount paid up on the shares in respect to which it is paid :

(7) The accounts of the Company shall show the share capital on which, and the rate at which, interest has been paid out of capital during the period to which the accounts relate :

(8) Nothing in this section shall affect any Company to which the Indian Railways Act, 1894, as amended by any subsequent enactment, applies.

93.—(1) Every mortgage or charge created after the first day of July nineteen hundred and eight by a Company registered in England or Ireland and being either—

Registration
of Mortgages
and Charges
in England
and Ireland.

(a) a mortgage or charge for the purpose of securing any issue of debentures ; or

(b) a mortgage or charge on uncalled share capital of the Company ; or

(c) a mortgage or charge created or evidenced by an instrument which, if executed by an individual, would require registration as a bill of sale ; or

(d) a mortgage or charge on any land, wherever situate, or any interest therein ; or

(e) a mortgage or charge on any book debts of the Company ; or

(f) a floating charge on the undertaking or property of the Company,

shall, so far as any security on the Company's property or undertaking is thereby conferred, be void against the liquidator and any creditor of the Company, unless the prescribed particulars of the mortgage or charge, together with the instrument (if any) by which the mortgage or charge is created or evidenced, are delivered to or received by the Registrar of Companies for registration in manner required by this Act within twenty-one days after the date of its creation, but without prejudice to any contract or obligation for repayment of the money thereby secured.

(9) Every Company shall cause a copy of every instrument creating any mortgage or charge requiring registration under this section to be kept at the registered office of the Company : Provided that, in the case of a series of uniform debentures, a copy of one such debenture shall be sufficient.

If a Company is authorized to borrow up to a certain amount, that means that it may not borrow beyond that amount, and it is well established that any attempt by the Company to do so is *ultra vires*.—*Payne v. The Cork Co., Ltd.* [1900], 1 Ch. 316.

When property is conveyed by a Company to Trustees to secure debentures or debenture stock, and the trust deed empowers the Trustees to sell any part of the property conveyed before the security is enforceable, and with the proceeds to purchase other property, which is to be held upon the like trusts, and the Trustees sell part of the property, and with the proceeds of sale purchase other property which is conveyed by the Vendor to them upon the trusts of the trust deed, the Company not being a party to the conveyance, the conveyance is not a mortgage or charge requiring registration under this section.—*Bristol United Breweries, Ltd. v. Abbot* [1908], 1 Ch. 279.

A deed by which property covered by a floating charge is

subsequently made the subject of a specific charge is required to be registered.—*Cornbrook Brewery Co., Ltd. v. Law Debenture Corporation, Ltd.* [1904], 1 Ch. 103.

A floating security is an equitable charge on the assets for the time being of a going concern. It attaches to the subject charged in the varying condition in which it happens to be from time to time.—*Government Stocks, etc., Co., Ltd. v. Manila Railway Co., Ltd.* [1897], A.C. 86.

A specific charge is one that, without more, fastens on ascertained and definite property, or property capable of being ascertained and defined; a floating charge is ambulatory and shifting in its nature, hovering over and, so to speak, floating with the property which it is intended to affect, until some event occurs or some act is done which causes it to settle and fasten on the subject of the charge within its reach and grasp.—*Illingworth v. Houldsworth* [1904], A.C. 358.

Where moneys are advanced to secure the liability of a Company under an antecedent independent guarantee, debentures giving a floating charge created by the Company in favour of the guarantors, who find money to pay off the debt owing by the Company and guaranteed by them, are, if the Company goes into winding up within three calendar months after the issue of the debentures, invalid unless it is proved that the Company was solvent immediately after the creation of the charge.

Quaere, whether it is necessary to register under this section an agreement by a Company to give a debenture containing a floating charge on its assets, where no debenture has actually been issued.—*In re Orleans Motor Company, Ltd.* [1911], 2 Ch. 41.

100.—(1) Every limited Company shall keep a register of mortgages and enter therein all mortgages and charges specifically affecting property of the Company, giving in each case a short description of the property mortgaged or charged, the amount of the mortgage or charge, and (except in the case of securities to bearer) the names of the mortgagees or persons entitled thereto.

Company's
Register of
Mortgages.

(2) If any Director, Manager, or other Officer of the Company knowingly and wilfully authorizes or permits the omission of any entry required to be made in pursuance of this section, he shall be liable to a fine not exceeding fifty pounds.

The Act requires registration, not of the instrument creating the

charge, but of the property charged. It extends, therefore, to the case where there is no instrument, such as where the security is created by deposit.—*Smith's Case*, 11 Ch. Div. 579, 585.

When debentures are issued to bearer it is the practice to register the name of the person to whom each debenture is first issued. When a debenture trust deed is executed it is the practice to register the Trustees or the persons entitled to the charge.

The right of a creditor or member of a Company to inspect the Register of Mortgages includes a right to take copies of the Register.—*Nelson v. Anglo American Land Mortgage Agency Co.* [1897], 1 Ch. 130.

104.—(1) Where either before or after the passing of this Act a Company has redeemed any debentures previously issued, the Company, unless the Articles or the conditions of issue expressly otherwise provide, or unless the debentures have been redeemed in pursuance of any obligation of the Company so to do (not being an obligation enforceable only by the person to whom the redeemed debentures were issued or his assigns), shall have power, and shall be deemed always to have had power, to keep the debentures alive for the purposes of re-issue, and where a Company has purported to exercise such a power the Company shall have power, and shall be deemed always to have had power, to re-issue the debentures either by re-issuing the same debentures or by issuing other debentures in their place, and upon such a re-issue the person entitled to the debentures shall have, and shall be deemed always to have had, the same rights and priorities as if the debentures had not previously been issued.

Power to
re-issue
Redeemed
Debentures in
certain cases.

(2) Where with the object of keeping debentures alive for the purpose of re-issue they have either before or after the passing of this Act been transferred to a nominee of the Company, a transfer from that nominee shall be deemed to be a re-issue for the purposes of this section.

(3) Where a Company has either before or after the passing of this Act deposited any of its debentures to secure advances from time to time on current account or otherwise, the debentures shall not be deemed to have been redeemed by

reason only of the account of the Company having ceased to be in debit whilst the debentures remained so deposited.

(4) The re-issue of a debenture or the issue of another debenture in its place under the power by this section given to, or deemed to have been possessed by, a Company, whether the re-issue or issue was made before or after the passing of this Act, shall be treated as the issue of a new debenture for the purposes of stamp duty; but it shall not be so treated for the purposes of any provision limiting the amount or number of debentures to be issued.

109.—(1) The Board of Trade may appoint one or more competent Inspectors to investigate the affairs of any Company and to report thereon in such manner as the Board direct—

Investigation
of affairs of
Company by
Board of Trade
Inspectors.

(i) In the case of a Banking Company having a share capital, on the application of members holding not less than one-third of the shares

issued :

(ii) In the case of any other Company having a share capital, on the application of members holding not less than one-tenth of the shares issued :

(iii) In the case of a Company not having a share capital, on the application of not less than one-fifth in number of the persons on the Company's register of members.

(2) The application shall be supported by such evidence as the Board of Trade may require for the purpose of showing that the applicants have good reason for, and are not actuated by malicious motives in requiring, the investigation; and the Board of Trade may, before appointing an Inspector, require the applicants to give security for payment of the costs of the inquiry.

(3) It shall be the duty of all Officers and Agents of the Company to produce to the Inspectors all books and documents in their custody or power.

(4) An Inspector may examine on oath the Officers and Agents of the Company in relation to its business, and may administer an oath accordingly.

(5) If any Officer or Agent refuses to produce any book

or document which under this section it is his duty to produce, or to answer any question relating to the affairs of the Company, he shall be liable to a fine not exceeding five pounds in respect of each offence.

(6) On the conclusion of the investigation the Inspectors shall report their opinion to the Board of Trade, and a copy of the report shall be forwarded by the Board to the registered office of the Company, and a further copy shall, at the request of the applicants for the investigation, be delivered to them.

The report shall be written or printed, as the Board direct.

(7) All expenses of and incidental to the investigation shall be defrayed by the applicants, unless the Board of Trade direct the same to be paid by the Company, which the Board is hereby authorized to do.

An application to prohibit the Board of Trade and an Inspector appointed by the Board from proceeding was dismissed.—*In re Grosvenor Hotel Co., Ltd.*, 76 L.T. 337.

110.—(1) A Company may by special resolution appoint Inspectors to investigate its affairs.

(2) Inspectors so appointed shall have the same powers and duties as Inspectors appointed by the Board of Trade, except that, instead of reporting to the Board, they shall report in such manner and to such persons as the Company in general meeting may direct.

Power of
Company to
appoint
Inspectors.

(3) Officers and Agents of the Company shall incur the like penalties in case of refusal to produce any book or document required to be produced to Inspectors so appointed, or to answer any question, as they would have incurred if the Inspectors had been appointed by the Board of Trade.

111. A copy of the report of any Inspectors appointed under this Act, authenticated by the seal of the Company whose affairs they have investigated, shall be admissible in any legal proceedings as evidence of the opinion of the Inspectors in relation to any matter contained in the report.

Report of
Inspectors to
be Evidence.

112.—(1) Every Company shall at each annual general

meeting appoint an Auditor or Auditors, to hold office until the next annual general meeting.

**Appointment
and Re-
muneration
of Auditors.**

(2) If an appointment of Auditors is not made at an annual general meeting, the Board of Trade may, on the application of any member of the Company, appoint an Auditor of the Company for the current year, and fix the remuneration to be paid to him by the Company for his services.

(3) A Director or Officer of the Company shall not be capable of being appointed Auditor of the Company.

(4) A person, other than a retiring Auditor, shall not be capable of being appointed Auditor at an annual general meeting unless notice of an intention to nominate that person to the office of Auditor has been given by a shareholder to the Company not less than fourteen days before the annual general meeting, and the Company shall send a copy of any such notice to the retiring Auditor, and shall give notice thereof to the shareholders, either by advertisement or in any other mode allowed by the Articles, not less than seven days before the annual general meeting :

Provided that if, after notice of the intention to nominate an Auditor has been so given, an annual general meeting is called for a date fourteen days or less after the notice has been given, the notice, though not given within the time required by this provision, shall be deemed to have been properly given for the purposes thereof, and the notice to be sent or given by the Company may, instead of being sent or given within the time required by this provision, be sent or given at the same time as the notice of the annual general meeting.

(5) The first Auditors of the Company may be appointed by the Directors before the statutory meeting, and if so appointed shall hold office until the first annual general meeting, unless previously removed by a resolution of the shareholders in general meeting, in which case the shareholders at that meeting may appoint Auditors.

(6) The Directors may fill any casual vacancy in the office of Auditor, but while any such vacancy continues the surviving or continuing Auditor or Auditors, if any, may act.

(7) The remuneration of the Auditors of a Company shall be fixed by the Company in general meeting, except that the remuneration of any Auditors appointed before the statutory meeting, or to fill any casual vacancy, may be fixed by the Directors.

When Auditors have been appointed by the Directors before the statutory meeting the statutory report to be submitted to that meeting must contain the names, addresses, and descriptions of such Auditors, and shall, so far as it relates to the shares allotted by the Company, and to the cash received in respect of such shares, and to the receipts and payments of the Company on capital account, be certified as correct by the Auditors (Section 65).

"It is impossible to read Section 7"—the Section of the Companies Act, 1879, corresponding with Section 112 of this Act—"without being struck with the importance of the enactment that the Auditors are to be appointed by the shareholders, and are to report to them directly, and not to or through the Directors. The object of this enactment is obvious. It evidently is to secure to the shareholders independent and reliable information respecting the true financial position of the Company at the time of the audit."—*In re London and General Bank* (No. 2) [1895], 2 Ch. 682.

For special remarks on the report of the Auditor as required by this Section, see Chapter XVI.

113.—(1) Every Auditor of a Company shall have a right of access at all times to the books and accounts and vouchers of the Company, and shall be entitled to require from the Directors and officers of the Company such information and explanation as may be necessary for the performance of the duties of the Auditors.

**Powers and
Duties of
Auditors.**

(2) The Auditors shall make a report to the shareholders on the Accounts examined by them, and on every balance sheet laid before the Company in general meeting during their tenure of office, and the report shall state—

(a) whether or not they have obtained all the information and explanations they have required; and

(b) whether, in their opinion, the balance sheet referred to in the report is properly drawn up so as to exhibit a true and correct view of the state of the Company's

affairs according to the best of their information and the explanations given to them, and as shown by the books of the Company.

(3) The balance sheet shall be signed on behalf of the board by two of the Directors of the Company, or, if there is only one Director, by that Director, and the Auditors' report shall be attached to the balance sheet, or there shall be inserted at the foot of the balance sheet a reference to the report, and the report shall be read before the Company in general meeting, and shall be open to inspection by any shareholder.

Any shareholder shall be entitled to be furnished with a copy of the balance sheet and Auditors' report at a charge not exceeding sixpence for every hundred words.

(4) If any copy of a balance sheet which has not been signed as required by this section is issued, circulated, or published, or if any copy of a balance sheet is issued, circulated, or published without either having a copy of the Auditors' report attached thereto or containing such reference to that report as is required by this section, the Company, and every Director, Manager, Secretary, or other Officer of the Company who is knowingly a party to the default, shall on conviction be liable to a fine not exceeding fifty pounds.

(5) In the case of a Banking Company registered after the fifteenth day of August eighteen hundred and seventy-nine—

(a) if the Company has branch banks beyond the limits of Europe, it shall be sufficient if the Auditor is allowed access to such copies of and extracts from the books and accounts of any such branch as have been transmitted to the head office of the Company in the United Kingdom ; and

(b) the balance sheet must be signed by the Secretary or Manager (if any), and where there are more than three Directors of the Company by at least three of those Directors, and where there are not more than three Directors by all the Directors.

The language of the Act is sufficient to show that by implication it requires that there shall be annually an audit of the Accounts resulting in a Balance Sheet, to whose accuracy the Auditor shall speak.—*Newton v. Birmingham Small Arms Company, Ltd.* [1906], 2 Ch. 378.

A Director is not necessarily personally responsible for Balance Sheets and Reports stated to be issued "by order of the Directors."—*In re Denham & Co.*, 25 Ch. D. 752.

The Secretary of a Company having been guilty of defalcations, by which loss was occasioned to the Company, the Directors alleged that the Company's Auditors had by negligence in the performance of their duties condoned to these defalcations, and refused to give them access to the Company's books for the purposes of audit. The Auditors thereupon brought an action against the Company and the Directors, claiming a declaration that they, as Auditors, were entitled at all times to access to the Company's books, and an order for access thereto. The time having arrived when, in the ordinary course, the audit of the Company's accounts by the plaintiffs should be proceeding for the purposes of the next annual general meeting, the plaintiffs made an interlocutory application in the action for an order that the defendants should give them access to the books, and Eve, J., made a mandatory order to that effect on the ground that the Auditors had a statutory right of access to the books.

Held by the Court of Appeal, that it was a question for the judicial discretion of the Court whether the right of access to the books claimed by the plaintiffs should be enforced by a mandatory order, and that such an order ought not, under the circumstances of the case to have been made upon an interlocutory application, and without any steps to ascertain whether the Company were desirous that the plaintiffs should continue to act as Auditors or not, and therefore the appeal must be allowed.—*Cuff v. London and County Land and Building Company, Ltd.* [1912], 1 Ch. 440.

114.—(1) Holders of preference shares and debentures of a Company shall have the same right to receive and inspect the balance sheets of the Company and the reports of the Auditors and other reports as is possessed by the holders of ordinary shares in the Company.

Rights of
Preference
Shareholders,
etc., as to
Receipt and
Inspection of
Reports, etc.

(2) This section shall not apply to a private company, nor to a Company registered before the first day of July, nineteen hundred and eight.

118.—(1) The forms in the Third Schedule to this Act

or forms as near thereto as circumstances admit, shall be used in all matters to which those forms refer.

Application and Alteration of Tables and Forms. (2) The Board of Trade may alter any of the tables and forms in the First Schedule to this Act, so that it does not increase the amount of fees payable to the Registrar in the said schedule mentioned, and may alter or add to the forms in the said Third Schedule.

121.—(1) For the purposes of this Act the expression “private Company” means a Company which by its articles—

Meaning of “Private Company.” (a) restricts the right to transfer its shares ; and

(b) limits the number of its members (exclusive of persons who are in the employment of the Company) to fifty ; and

(c) prohibits any invitation to the public to subscribe for any shares or debentures of the Company.

(2) A private Company may, subject to anything contained in the Memorandum or Articles, by passing a special resolution and by filing with the Registrar of Companies such a statement in lieu of prospectus as the Company, if a public Company, would have had to file before allotting any of its shares or debentures, together with such a statutory declaration as the Company, if a public Company, would have had to file before commencing business, turn itself into a public Company.

The Articles of Association of a Company contained the restrictions, limitations, and prohibitions mentioned in clauses (a), (b), and (c) respectively of Section 121, Sub-section 1, of the Act, but in each of two years the number of its members (exclusive of persons in the employment of the Company) in fact exceeded fifty. Informations laid against the Company for having in each of the two years respectively made default in forwarding to the Registrar of Companies a statement in the form of an audited Balance Sheet as required by Section 26 were dismissed by a magistrate upon the ground that the Company was still a private company within the meaning of Section 121 and was therefore not bound to forward the statement.

Held, that the decision of the magistrate was right inasmuch

as a Company whose articles contain the restrictions, limitations, and prohibitions mentioned in clauses (a), (b), and (c) of Sub-section 1 of Section 121 remains a "Private Company" within the meaning of the definition contained in the section, even though those restrictions, limitations, and prohibitions are not in fact complied with by the Company.—*Park v. Royalties Syndicate, Ltd.* [1912], 1. K.B. 330.

It was in consequence of this decision that the Companies Act, 1913, was passed. The text of this Act is set out on pages 135 to 137.

174.—(1) The Court may, after it has made a winding-up order, summon before it any Officer of the Company, or person known or suspected to have in his possession any property of the Company, or supposed to be indebted to the Company, or any person whom the Court deems capable of giving information concerning the trade, dealings, affairs, or property of the Company.

(2) The Court may examine him on oath concerning the same, either by word of mouth or on written interrogatories, and may reduce his answers to writing and require him to sign them.

(2) The Court may require him to produce any books and papers in his custody or power relating to the Company; but, where he claims any lien on books or papers produced by him, the production shall be without prejudice to that lien, and the Court shall have jurisdiction in the winding up to determine all questions relating to that lien.

(4) If any person so summoned, after being tendered a reasonable sum for his expenses, refuses to come before the Court at the time appointed, not having a lawful impediment (made known to the Court at the time of its sitting, and allowed by it), the Court may cause him to be apprehended, and brought before the Court for examination.

As to an Auditor being an Officer of the Company, *see* remarks in Chapter I.

The section is as applicable to matters occurring in the winding up as to matters before the winding up.—*Ex parte Carver*, 47 L.J. Ch. 702.

The Witness is entitled to be attended at his examination by his

Counsel and Solicitor.—*In re Breech-Loading Armoury Co., In re Merchants' Co.*, 4 Eq., 453.

The Witness is entitled to be re-examined for the purpose of explaining the evidence given in his examination.—*In re Cambrian Mining Co.*, 20 Ch. D. 376.

175.—(1) When an Order has been made in England for winding up a Company by the Court, and the Official Receiver has made a further report under this Act stating that in his opinion a fraud has been committed by any person in the promotion or formation of the Company, or by any Director or other Officer of the Company in relation to the Company since its formation, the Court may, after consideration of the report, direct that any person who has taken any part in the promotion or formation of the Company, or has been a Director or Officer of the Company, shall attend before the Court on a day appointed by the Court for that purpose, and be publicly examined as to the promotion or formation or the conduct of the business of the Company, or as to his conduct and dealings as Director or Officer thereof.

Power in
England to
order Public
Examination
of Promoters,
Directors, etc.

(2) The Official Receiver shall take part in the examination, and for that purpose may, if specially authorized by the Board of Trade in that behalf, employ a Solicitor with or without Counsel.

(3) The Liquidator, where the Official Receiver is not the Liquidator, and any creditor or contributory, may also take part in the examination either personally or by Solicitor or Counsel.

(4) The Court may put such questions to the person examined as the Court thinks fit.

(5) The person examined shall be examined on oath, and shall answer all such questions as the Court may put or allow to be put to him.

(6) A person ordered to be examined under this section shall at his own cost, before his examination, be furnished with a copy of the Official Receiver's report, and may at his own cost employ a Solicitor with or without Counsel, who shall be at liberty to put to him such questions as the Court

may deem just for the purpose of enabling him to explain or qualify any answers given by him: Provided that if he is, in the opinion of the Court, exculpated from any charges made or suggested against him, the Court may allow him such costs as in its discretion it may think fit.

(7) Notes of the examination shall be taken down in writing, and shall be read over to or by, and signed by, the person examined, and may thereafter be used in evidence against him, and shall be open to inspection of any creditor or contributory at all reasonable times.

(8) The Court may, if it thinks fit, adjourn the examination from time to time.

(9) An examination under this section may, if the Court so directs, and subject to general rules, be held before any Judge of County Courts, or before any Officer of the Supreme Court, being an Official Referee, Master, or Registrar in Bankruptcy, or before any District Registrar of the High Court named for the purpose by the Lord Chancellor, or, in the case of Companies being wound up by a Palatine Court, before a Registrar of that Court, and the powers of the Court under this section as to the conduct of the examination, but not as to costs, may be exercised by the person before whom the examination is held.

The Liquidator of a Company, in order to obtain evidence in support of a misfeasance summons which he had issued against the Directors and Auditors, applied under Section 115 of the Act of 1862 for an order that the Surveyor of Taxes should attend for examination, and produce some Balance Sheets of the Company which had been delivered to him for the purpose of assessment of income tax, in order to prove as against the Auditors the case alleged by the summons. Wright, J., held that the order ought not to be made, and the Court of Appeal upheld his decision.—*In re Joseph Hargreaves, Limited* [1900], 1 Ch. 347.

In an action to realize Debentures granted by a Company, which was afterwards ordered to be wound up, a summons was taken out by the Official Receiver and Liquidator, asking for the leave of the Court to take misfeasance proceedings against the Directors and Auditors of the Company, and that the costs might be provided by the Receiver in the action. A majority of the Debentureholders was opposed to misfeasance proceedings being taken at the expense of the assets covered by the Debentures, and also to

abandoning the claims of the Debenture-holders to any sums recovered in the proceedings. A suggestion was, however, made by a Debenture-holder that if there were people who believed they could make a good thing out of a misfeasance summons they would be prepared, for the right to step into the Debenture-holders' shoes, to pay a substantial sum, but that the right should not be given up without anything in return. It was held that an order must be made directing the Receiver to sell by auction the claim against the Directors and Auditors.—*Wood v. Woodhouse & Rawson United* [1896], W.N. 4.

A summons for misfeasance or breach of trust should, for convenience, state (whether or not it ought of necessity to do so) the grounds on which it is alleged that a misfeasance or breach of trust has been committed.—*In re New Mashonaland Exploration Co., Ltd.* [1892], 3 Ch. 577.

215.—(1) Where in the course of winding up a Company it appears that any person who has taken part in the formation or promotion of the Company, or any past or present Director, Manager, or Liquidator, or any Officer of the Company, has misapplied or retained or become liable or accountable for any money or property of the Company, or been guilty of any misfeasance or breach of trust in relation to the Company, the Court may, on the application of the Official Receiver, or of the Liquidator, or of any creditor or contributory, examine into the conduct of the Promoter, Director, Manager, Liquidator, or Officer, and compel him to repay or restore the money or property or any part thereof respectively, with interest at such rate as the Court thinks just, or to contribute such sum to the assets of the Company by way of compensation in respect of the misapplication, retainer, misfeasance or breach of trust as the Court thinks just.

An Auditor may or may not be an "Officer" of a Company, and *primâ facie* he is not; but if he is appointed to the office of Auditor to the Company, and acts in that office, he will be an Officer within this section; and in case the Company is wound up he will be liable to a misfeasance summons under that section in respect of dividends declared upon the faith of his audit; and no irregularity in his appointment would avail him as a defence.

But, seeing that the word " Auditor " does not occur in this section, the performance of Auditor's work upon a given occasion by a person who has never been appointed to the office of Auditor of the Company does not make that person an " Officer " of the Company so as to render him liable under the section.—*In re Western Counties Steam Bakeries and Milling Co.* [1897], 1 Ch. 617.

Auditors who have been appointed by a Banking Company in pursuance of the Companies Act, 1879, Section 7, and are spoken of as Officers of the Company in the Articles of Association, are Officers within the meaning of this section, and if guilty of misfeasance may be made liable in proceedings under this section.—*In re London & General Bank* [1895], 2 Ch. 166.

Misfeasance is defined in Wharton's Law Lexicon as " a misdeed or trespass ; also the improper performance of some lawful act " ; and James, L.J., in reference to Section 165 of the Act of 1862, laid down that the word " misfeasance " is there confined to a misfeasance in the nature of a breach of trust.—*Coventry & Dixon's Case*, 14 Ch.D. 660, 670.

Misfeasance covers every misconduct by an Officer of the Company as such for which such Officer might have been sued apart from the section, and includes the case of an Auditor who, either knowingly or through failure to use reasonable skill and care, certifies Accounts which ought not to have been certified, provided the direct result is pecuniary damage to the Company.—*In re Kingston Cotton Mill Co.* (No. 2) [1896], 1 Ch. 331.

The omission or neglect of a Trustee, Director, or Manager to comply with statutory provisions as to audit may constitute misfeasance.—*Davies's Case*, 45 Ch. D. 537.

The onus of proving misfeasance is on the applicant, so that, even if the misfeasance alleged be non-disclosure, the applicant must prove non-disclosure.—*Bentinck v. Fenn*, 12 App. Cas. 652, etc.

The section is personal only, and does not apply as against the executors of a deceased Director or Officer.—*Felton's Executors' Case*, 1 Eq. 219 ; *British Guardian Co.*, 14 Ch. D. 335.

The section applies to misfeasance, not to non-feasance.—*In re Wedgwood Coal Co.*, 10 Ch. D. 450.

Misfeasance was alleged against an Auditor on the ground that he did not use reasonable care and skill in connection with the Balance Sheet, thereby causing loss of assets and damage to the Shareholders and Creditors of the Company. The main points on which the motion was founded were that book debts to a considerable amount had been included again and again in the assets when with reasonable care and skill the Auditor might have ascertained that they were worthless, and that the half-yearly Balance Sheets

in question did not show the true position of the Company on the dates given, inasmuch as they included, in both instances, receipts to about a week later without having regard to the purchases during the interval which had increased the debits of the Company.

It was also alleged that certain information and figures in one of the Balance Sheets were obtained by the Auditor from the Managing Director, who had been the Vendor to the Company.

In giving judgment, the County Court Judge of Liverpool stated that he thought the Auditor had been negligent as an Auditor in the sense that he had relied on statements made to him by the Directors and did not put in his certificate the fact that he was relying on the statements of the Directors. That the Auditor did not disclose that there was no Cash Book, and, if it were material in this case to say so, he thought the Auditor ought to have disclosed it. He did not think the Auditor ought to have accepted the statements of a Director as to the taking of stock, and the Balance Sheets should have shown the position of the Company on the date they purported to show the position. As, however, none of those acts seemed to have diminished the assets of the Company, and there was no evidence that at any time the book debts could have been collected, he dismissed the action against the Auditor, but without costs.—*In re Liverpool and Wigan Supply Association, Ltd.* [1907], *Acct. L.R.* (2) 4.

As to whether an Auditor is an Officer of every Company registered under the Acts of 1862 and 1908, *see* remarks in Chapter I.

216. If any Director, Officer, or contributory of any Company being wound up destroys, mutilates, alters, or falsifies any books, papers, or securities, or makes or is privy to the making of any false or fraudulent entry in any register, book of account, or document belonging to the Company with intent to defraud or deceive any person, he shall be guilty of a misdemeanour, and be liable to imprisonment for any term not exceeding two years, with or without hard labour.

217.—(1) If it appears to the Court in the course of a winding up by or subject to the supervision of the Court that any past or present Director, Manager, Officer, or member of the Company has been guilty of any offence in relation to the Company for which he is criminally responsible the Court may, on the

**Penalty for
Falsification
of Books.**

**Prosecution
of delinquent
Directors, etc.**

application of any person interested in the winding up, or of its own motion, direct the Liquidator to prosecute for the offence, and may order the costs and expenses to be paid out of the assets of the Company.

(2) If it appears to the Liquidator in the course of a voluntary winding up that any past or present Director, Manager, Officer, or member of the Company has been guilty of any offence in relation to the Company for which he is criminally responsible, the Liquidator, with the previous sanction of the Court, may prosecute the offender, and all expenses properly incurred by him in the prosecution shall be payable out of the assets of the Company in priority to all other liabilities.

218. If any person, on examination on oath authorized under this Act, or in any affidavit or deposition in or about the winding up of any Company or otherwise in or about any matter arising under this Act, wilfully and corruptly gives false evidence, he shall be liable to the penalties for wilful perjury.

245. In the application of this Act to existing Companies, it shall apply in the same manner in the case of a limited Company, other than a Company limited by guarantee, as if the Company had been formed and registered under this Act as a Company limited by shares; in the case of a Company limited by guarantee, as if the Company had been formed and registered under this Act as a Company limited by guarantee; and in the case of a Company other than a limited Company, as if the Company had been formed and registered under this Act as an unlimited Company:

Application
of Act to
Companies
formed under
former
Companies
Acts.

Provided that reference, express or implied, to the date of registration shall be construed as a reference to the date at which the Company was registered under the Joint Stock Companies Acts, or under the Companies Act, 1862, as the case may be.

246. This Act shall apply to every Company registered

but not formed under the Joint Stock Companies Acts, or the Companies Act, 1862, in the same manner as it is hereinafter in this Act declared to apply to Companies registered but not formed under this Act :

Application
of Act to
Companies
registered
under former
Companies
Acts.

Provided that reference, express or implied, to the date of registration shall be construed as a reference to the date at which the Company was registered under the Joint Stock Companies Acts, or the Companies Act, 1862, as the case may be.

247. This Act shall apply to every unlimited Company registered in pursuance of the Companies Act, 1879, as a limited Company, in the same manner as it applies to an unlimited Company registered in pursuance of this Act as a limited Company :

Application
of Act to
Companies
re-registered
under
Companies
Act, 1879.

Provided that reference, express or implied, to the date of registration shall be construed as a reference to the date at which the Company was registered as a limited Company under the Companies Act, 1879.

42 & 43 Vict.,
c. 76.

274.—(1) Every Company incorporated outside the United Kingdom which establishes a place of business within the United Kingdom shall within one month from the establishment of the place of business file with the Registrar of Companies—

Requirements
as to
Companies
established
outside the
United Kingdom.

(a) a certified copy of the Charter, Statutes, or Memorandum and Articles of the Company, or other instrument constituting or defining the constitution of the Company, and, if the instrument is not written in the English language, a certified translation thereof ;

¹ (b) a list of the Directors of the Company ;

(c) the names and addresses of some one or more persons resident in the United Kingdom authorized to accept on behalf of the Company service of process and any notices required to be served on the Company ;

¹ Additional information is now required by the Companies (Particulars as to Directors) Act, 1917. (See Appendix.)

and, in the event of any alteration being made in any such instrument or in the Directors or in the names or addresses of any such persons as aforesaid, the Company shall within the prescribed time file with the Registrar a notice of the alteration.

(2) Any process or notice required to be served on the Company shall be sufficiently served if addressed to any person whose name has been so filed as aforesaid and left at or sent by post to the address which has been so filed.

(3) Every Company to which this section applies shall in every year file with the Registrar such a statement in the form of a balance sheet as would, if it were a Company formed and registered under this Act and having a share capital, be required under this Act to be included in the annual summary.

(4) Every Company to which this section applies, and which uses the word " Limited " as part of its name, shall—

(a) in every prospectus inviting subscriptions for its shares or debentures in the United Kingdom state the country in which the Company is incorporated ; and

(b) conspicuously exhibit on every place where it carries on business in the United Kingdom the name of the Company and the country in which the Company is incorporated ; and

(c) have the name of the Company and of the country in which the Company is incorporated mentioned in legible characters in all bill-heads and letter paper, and in all notices, advertisements, and other official publications of the Company.

(5) If any Company to which this section applies fails to comply with any of the requirements of this section the Company, and every Officer or Agent of the Company, shall be liable to a fine not exceeding fifty pounds, or, in the case of a continuing offence, five pounds for every day during which the default continues.

(6) For the purposes of this section—

The expression " certified " means certified in the prescribed manner to be a true copy or a correct translation ;

The expression " place of business " includes a Share Transfer or Share Registration Office ;

The expression "Director" includes any person occupying the position of Director, by whatever name called; and

The expression "Prospectus" means any prospectus, notice, circular, advertisement, or other invitation, offering to the public for subscription or purchase any shares or debentures of the Company.

(7) There shall be paid to the Registrar for registering any document required by this section to be filed with him a fee of five shillings, or such smaller fee as may be prescribed.

275. A Company incorporated in a British possession which has filed with the Registrar of Companies the documents and particulars specified in paragraphs (a), (b), and (c) of Sub-section (1) of the last foregoing section shall have the same power to hold lands in the United Kingdom as if it were a Company incorporated under this Act.

281. If any person in any return, report, certificate, balance sheet, or other document, required by or for the purposes of any of the provisions of this Act specified in the Fifth Schedule hereto, wilfully makes a statement false in any material particular, knowing it to be false, he shall be guilty of a misdemeanour, and shall be liable on conviction on indictment to imprisonment for a term not exceeding two years, with or without hard labour, and on summary conviction to imprisonment for a term not exceeding four months, with or without hard labour, and in either case to a fine in lieu of or in addition to such imprisonment as aforesaid:

Provided that the fine imposed on summary conviction shall not exceed one hundred pounds.

The following is the Fifth Schedule, referred to in the above section—

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FIRST SCHEDULE

TABLE A.—REGULATIONS FOR MANAGEMENT OF A
COMPANY LIMITED BY SHARES

1. In these regulations, unless the context otherwise requires, expressions defined in the Companies (Consolidation) Act, 1908, or any statutory modification thereof in force at the date at which these regulations become binding on the Company, shall have the meanings so defined; and words importing the singular shall include the plural, and *vice versâ*, and words importing the masculine gender shall include females, and words importing persons shall include bodies corporate.

2. The Directors shall have regard to the restrictions on the commencement of business imposed by Section eighty-seven of the Companies (Consolidation) Act, 1908, if, and so far as, those restrictions are binding upon the Company.

3. Subject to the provisions, if any, in that behalf of the Memorandum of Association of the Company, and without prejudice to any special rights previously conferred on the holders of existing shares in the Company, any share in the Company may be issued with

such preferred, deferred, or other special rights, or such restrictions, whether in regard to dividend, voting, return of share capital, or otherwise, as the Company may from time to time by special resolution determine.

4. If at any time the share capital is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may be varied with the consent in writing of the holders of three-fourths of the issued shares of that class, or with the sanction of an extraordinary resolution passed at a separate general meeting of the holders of the shares of the class. To every such separate general meeting the provisions of these regulations relating to general meetings shall *mutatis mutandis* apply, but so that the necessary quorum shall be two persons at least holding or representing by proxy one-third of the issued shares of the class.

5. No share shall be offered to the public for subscription except upon the terms that the amount payable on application shall be at least five per cent. of the nominal amount of the share; and the Directors shall, as regards any allotment of shares, duly comply with such of the provisions of Sections eighty-five and eighty-eight of the Companies (Consolidation) Act, 1908, as may be applicable thereto.

6. Every person whose name is entered as a member in the register of members shall, without payment, be entitled to a certificate under the common seal of the Company specifying the share or shares held by him and the amount paid up thereon, provided that in respect of a share or shares held jointly by several persons the Company shall not be bound to issue more than one certificate, and delivery of a certificate for a share to one of several joint holders shall be sufficient delivery to all.

The certificate must be ready for delivery within two months after allotment or registration of the transfer unless the conditions of issue otherwise provide.

7. If a share certificate is defaced, lost, or destroyed, it

may be renewed on payment of such fee, if any, not exceeding one shilling, and on such terms, if any, as to evidence and indemnity as the Directors think fit.

8. No part of the funds of the Company shall be employed in the purchase of, or in loans upon the security of, the Company's shares.

9. The Company shall have a lien on every share (not being a fully-paid share) for all moneys (whether presently payable or not) called or payable at a fixed time in respect of that share, and the Company shall also have a lien on all shares (other than fully-paid shares) standing registered in the name of a single person, for all moneys presently payable by him or his estate to the Company; but the Directors may at any time declare any share to be wholly or in part exempt from the provisions of this clause. The Company's lien, if any, on a share shall extend to all dividends payable thereon.

10. The Company may sell, in such manner as the Directors think fit, any shares on which the Company has a lien, but no sale shall be made unless some sum in respect of which the lien exists is presently payable, nor until the expiration of fourteen days after a notice in writing, stating and demanding payment of such part of the amount in respect of which the lien exists as is presently payable, has been given to the registered holder for the time being of the share, or the person entitled by reason of his death or bankruptcy to the share.

11. The proceeds of the sale shall be applied in payment of such part of the amount in respect of which the lien exists as is presently payable, and the residue shall (subject to a like lien for sums not presently payable as existed upon the shares prior to the sale) be paid to the person entitled to the shares at the date of the sale. The purchaser shall be registered as the holder of the shares, and he shall not be bound to see to the application of the purchase money, nor shall his title to the shares be affected by any irregularity or invalidity in the proceedings in reference to the sale.

12. The Directors may from time to time make calls upon the members in respect of any moneys unpaid on their shares, provided that no call shall exceed one-fourth of the nominal amount of the share, or be payable at less than one month from the last call; and each member shall (subject to receiving at least fourteen days' notice specifying the time or times of payment) pay to the Company at the time or times so specified the amount called on his shares.

Calls on Shares.

13. The joint holders of a share shall be jointly and severally liable to pay all calls in respect thereof.

14. If a sum called in respect of a share is not paid before or on the day appointed for payment thereof, the person from whom the sum is due shall pay interest upon the sum at the rate of five pounds per cent per annum from the day appointed for the payment thereof to the time of the actual payment, but the Directors shall be at liberty to waive payment of that interest wholly or in part.

15. The provisions of these regulations as to payment of interest shall apply in the case of nonpayment of any sum which, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the amount of the share, or by way of premium, as if the same had become payable by virtue of a call duly made and notified.

16. The Directors may make arrangements on the issue of shares for a difference between the holders in the amount of calls to be paid and in the times of payment.

17. The Directors may, if they think fit, receive from any member willing to advance the same all or any part of the moneys uncalled and unpaid upon any shares held by him; and upon all or any of the moneys so advanced may (until the same would, but for such advance, become presently payable) pay interest at such rate (not exceeding, without the sanction of the Company in general meeting, six per cent) as may be agreed upon between the member paying the sum in advance and the Directors.

The word "interest" does not mean "dividend." Interest upon moneys paid in advance is a legal debt, payable out of any

survivors or survivor, or the executors or administrators of the deceased survivor, shall be the only persons recognized by the Company as having any title to the share.

22. Any person becoming entitled to a share in consequence of the death or bankruptcy of a member shall, upon such evidence being produced as may from time to time be required by the Directors, have the right, either to be registered as a member in respect of the share or, instead of being registered himself, to make such transfer of the share as the deceased or bankrupt person could have made; but the Directors shall, in either case, have the same right to decline or suspend registration as they would have had in the case of a transfer of the share by the deceased or bankrupt person before the death or bankruptcy.

23. A person becoming entitled to a share by reason of the death or bankruptcy of the holder shall be entitled to the same dividends and other advantages to which he would be entitled if he were the registered holder of the share, except that he should not, before being registered as a member in respect of the share, be entitled in respect of it to exercise any right conferred by membership in relation to meetings of the Company.

24. If a member fails to pay any call or instalment of a call on the day appointed for payment thereof, the Directors may, at any time thereafter during such time as any part of such call or instalment remains unpaid, serve a notice on him requiring payment of so much of the call or instalment as is unpaid, together with any interest which may have accrued.

**Forfeiture of
Shares.**

25. The notice shall name a further day (not earlier than the expiration of fourteen days from the date of the notice) on or before which the payment required by the notice is to be made, and shall state that in the event of nonpayment at or before the time appointed the shares in respect of which the call was made will be liable to be forfeited.

26. If the requirements of any such notice as aforesaid are not complied with, any share in respect of which the notice has been given may at any time thereafter, before the

payment required by the notice has been made, be forfeited by a resolution of the Directors to that effect.

27. A forfeited share may be sold or otherwise disposed of on such terms and in such manner as the Directors think fit, and at any time before a sale or disposition the forfeiture may be cancelled on such terms as the Directors think fit.

Forfeited shares may be re-issued as paid up to an amount not exceeding the amount paid by the previous holder, and may be so re-issued in consideration of a sum less than the sum credited as paid on them.—*Morrison v. Trustees, Executors, and Securities Insurance Corporation, Ltd.* [1898], W.N. 154.

28. A person whose shares have been forfeited shall cease to be a member in respect of the forfeited shares, but shall, notwithstanding, remain liable to pay to the Company all moneys which, at the date of the forfeiture, were presently payable by him to the Company in respect of the shares, but his liability shall cease if and when the Company receive payment in full of the nominal amount of the shares.

29. A statutory declaration in writing that the declarant is a Director of the Company, and that a share in the Company has been duly forfeited on a date stated in the declaration, shall be conclusive evidence of the facts therein stated as against all persons claiming to be entitled to the share, and that declaration, and the receipt of the Company for the consideration, if any, given for the share on the sale or disposition thereof shall constitute a good title to the share, and the person to whom the share is sold or disposed of shall be registered as the holder of the share and shall not be bound to see to the application of the purchase money, if any, nor shall his title to the share be affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale, or disposal of the share.

30. The provisions of these regulations as to forfeiture shall apply in the case of nonpayment of any sum which, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the amount of the share, or by way of premium, as if the same had been payable by virtue of a call duly made and notified.

31. The Directors may, with the sanction of the Company previously given in general meeting, convert any paid-up shares into stock, and may with the like sanction reconvert any stock into paid-up shares of any denomination.

32. The holders of stock may transfer the same, or any part thereof, in the same manner, and subject to the same regulations, as, and subject to which, the shares from which the stock arose might previously to conversion have been transferred, or as near thereto as circumstances admit; but the Directors may from time to time fix the minimum amount of stock transferable, and restrict or forbid the transfer of fractions of that minimum, but the minimum shall not exceed the nominal amount of the shares from which the stock arose.

33. The holders of stock shall, according to the amount of the stock held by them, have the same rights, privileges, and advantages as regards dividends, voting at meetings of the Company, and other matters as if they held the shares from which the stock arose, but no such privilege or advantage (except participation in the dividends and profits of the Company) shall be conferred by any such aliquot part of stock as would not, if existing in shares, have conferred that privilege or advantage.

34. Such of the regulations of the Company (other than those relating to share warrants) as are applicable to paid-up shares shall apply to stock, and the words "share" and "shareholder" therein shall include "stock" and "stockholder."

35. The Company may issue share warrants, and accordingly the Directors may in their discretion, with respect to any share which is fully paid up, on application in writing signed by the person registered as holder of the share, and authenticated by such evidence, if any, as the Directors may from time to time require as to the identity of the person signing the request, and on receiving the certificate, if any, of the share, and the amount of the stamp duty on the warrant and such fee as the Directors may from time to time require, issue under the Company's seal a warrant, duly stamped, stating that the bearer of the

Share Warrants.

warrant is entitled to the shares therein specified, and may provide by coupons, or otherwise for the payment of dividends, or other moneys, on the shares included in the warrant.

36. A share warrant shall entitle the bearer to the shares included in it, and the shares shall be transferred by the delivery of the share warrant, and the provisions of the regulations of the Company with respect to transfer and transmission of shares shall not apply thereto.

37. The bearer of a share warrant shall, on surrender of the warrant to the Company for cancellation, and on payment of such sum as the Directors may from time to time prescribe, be entitled to have his name entered as a member in the register of members in respect of the shares included in the warrant.

38. The bearer of a share warrant may at any time deposit the warrant at the office of the Company, and so long as the warrant remains so deposited the depositor shall have the same right of signing a requisition for calling a meeting of the Company, and of attending and voting and exercising the other privileges of a member at any meeting held after the expiration of two clear days from the time of deposit, as if his name were inserted in the register of members as the holder of the shares included in the deposited warrant. Not more than one person shall be recognized as depositor of the share warrant. The Company shall, on two days' written notice, return the deposited share warrant to the depositor.

39. Subject as herein otherwise expressly provided no person shall, as bearer of a share warrant, sign a requisition for calling a meeting of the Company, or attend, or vote, or exercise any other privilege of a member at a meeting of the Company, or be entitled to receive any notices from the Company; but the bearer of a share warrant shall be entitled in all other respects to the same privileges and advantages as if he were named in the register of members as the holder of the shares included in the warrant, and he shall be a member of the Company.

40. The Directors may from time to time make rules as to the terms on which (if they shall think fit) a new share

warrant or coupon may be issued by way of renewal in case of defacement, loss, or destruction.

41. The Directors may, with the sanction of an extraordinary resolution of the Company, increase the share capital by such sum, to be divided into shares of such amount, as the resolution shall prescribe.

Alteration of
Capital.

42. Subject to any direction to the contrary that may be given by the resolution sanctioning the increase of share capital, all new shares shall, before issue, be offered to such persons as at the date of the offer are entitled to receive notices from the Company of general meetings in proportion, as nearly as the circumstances admit, to the amount of the existing shares to which they are entitled. The offer shall be made by notice specifying the number of shares offered, and limiting a time within which the offer, if not accepted, will be deemed to be declined, and, after the expiration of that time, or on the receipt of an intimation from the person to whom the offer is made that he declines to accept the shares offered, the Directors may dispose of the same, in such manner as they think most beneficial to the Company. The Directors may likewise so dispose of any new shares which (by reason of the ratio which the new shares bear to shares held by persons entitled to an offer of new shares) cannot, in the opinion of the Directors, be conveniently offered under this article.

43. The new shares shall be subject to the same provisions with reference to the payment of calls, lien, transfer, transmission, forfeiture, and otherwise as the shares in the original share capital.

44. The Company may, by special resolution—

(a) Consolidate and divide its share capital into shares of larger amount than its existing shares :

(b) By subdivision of its existing shares, or any of them, divide the whole or any part of its share capital into shares of smaller amount than is fixed by the Memorandum of Association, subject, nevertheless, to the provisions of paragraph (d) of Sub-section (1) of Section forty-one of the Companies (Consolidation) Act, 1908 :

(c) Cancel any shares which, at the date of the passing of the resolution, have not been taken or agreed to be taken by any person :

(d) Reduce its share capital in any manner and with and subject to any incident authorized, and consent required by law.

45. The statutory general meeting of the Company shall be held within the period required by Section sixty-five of the Companies (Consolidation) Act, 1908.

General
Meetings.

46. A general meeting shall be held once in every year at such time (not being more than fifteen months after the holding of the last preceding general meeting) and place as may be prescribed by the Company in general meeting, or in default, at such time in the month following that in which the anniversary of the Company's incorporation occurs, and at such place as the Directors shall appoint. In default of a general meeting being so held, a general meeting shall be held in the month next following, and may be convened by any two members in the same manner as nearly as possible as that in which meetings are to be convened by the Directors.

¹ A single shareholder cannot constitute a meeting of a Company. —*Sharp v. Dawes* [1876], 2 Q.B.D. 26.

47. The above-mentioned general meetings shall be called ordinary meetings ; all other general meetings shall be called extraordinary.

48. The Directors may, whenever they think fit, convene an extraordinary general meeting, and extraordinary general meetings shall also be convened on such requisition, or in default may be convened by such requisitionists, as provided by Section sixty-six of the Companies (Consolidation) Act, 1908. If at any time there are not within the United Kingdom sufficient Directors capable of acting to form a quorum, any Director or any two members of the Company may convene an extraordinary general meeting in the same

¹ In *East v. Bennett Bros., Ltd.*, 1911, 1 Ch. 163, it was held that where all the shares of a particular class were held by one person, such person could constitute a meeting.

manner as nearly as possible as that in which meetings may be convened by the Directors.

49. Seven days' notice at the least (exclusive of the day on which the notice is served or deemed to be served, but inclusive of the day for which notice is given), specifying the place, the day, and the hour of meeting and, in case of special business, the general nature of that business, shall be given in manner hereinafter mentioned, or in such other manner, if any, as may be prescribed by the Company in general meeting, to such persons as are, under the regulations of the Company, entitled to receive such notices from the Company; but the non-receipt of the notice by any member shall not invalidate the proceedings at any general meeting.

50. All business shall be deemed special that is transacted at an extraordinary meeting, and all that is transacted at an ordinary meeting, with the exception of sanctioning a dividend, the consideration of the accounts, balance sheets, and the ordinary report of the Directors and Auditors, the election of Directors and other Officers in the place of those retiring by rotation, and the fixing of the remuneration of the Auditors.

51. No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business; save as herein otherwise provided, three members personally present shall be a quorum.

52. If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved; in any other case it shall stand adjourned to the same day in the next week, at the same time and place, and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the members present shall be a quorum.

53. The Chairman, if any, of the Board of Directors shall preside as Chairman at every general meeting of the Company.

54. If there is no such Chairman, or if at any meeting he

is not present within fifteen minutes after the time appointed for holding the meeting, or is unwilling to act as Chairman, the members present shall choose some one of their number to be Chairman.

55. The Chairman may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for ten days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Save as aforesaid it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

56. At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is (before or on the declaration of the result of the show of hands) demanded by at least three members, and, unless a poll is so demanded, a declaration by the Chairman that a resolution has, on a show of hands, been carried, or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book of the proceedings of the Company shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of, or against, that resolution.

57. If a poll is duly demanded it shall be taken in such manner as the Chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

It is customary before taking the poll to appoint "Scrutineers." The most reliable persons to appoint to that office are the Auditors of the Company. They are practically bound to secrecy, to act impartially, and are usually well acquainted with the necessary procedure and formalities in connection with the taking of the poll. It is, however, no part of their duties as Auditors, and they would have to be paid an additional fee for acting as Scrutineers.

58. In the case of an equality of votes, whether on a show of hands or on a poll, the Chairman of the meeting at which

the show of hands takes place or at which the poll is demanded, shall be entitled to a second or casting vote.

59. A poll demanded on the election of a Chairman, or on a question of adjournment, shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the Chairman of the meeting directs.

60. On a show of hands every member present in person shall have one vote. On a poll every member shall have one vote for each share of which he is the holder.

Votes of
Members.

61. In the case of joint holders the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders; and for this purpose seniority shall be determined by the order in which the names stand in the register of members.

62. A member of unsound mind, or in respect of whom an order has been made by any Court having jurisdiction in lunacy, may vote, whether on a show of hands or on a poll, by his committee, *curator bonis*, or other person in the nature of a committee or *curator bonis* appointed by that Court, and any such committee, *curator bonis*, or other person may, on a poll, vote by proxy.

63. No member shall be entitled to vote at any general meeting unless all calls or other sums presently payable by him in respect of shares in the Company have been paid.

64. On a poll votes may be given either personally or by proxy.

65. The instrument appointing a proxy shall be in writing under the hand of the appointor or of his attorney duly authorized in writing, or, if the appointor is a corporation, either under the common seal, or under the hand of an officer or attorney so authorized. No person shall act as a proxy unless either he is entitled on his own behalf to be present and vote at the meeting at which he acts as proxy, or he has been appointed to act at that meeting as proxy for a corporation.

66. The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed

Apart from special provision in the Articles Directors are not entitled to their fees free of income tax.—*Boschoek Proprietary Co., Ltd. v. Fuke*, [1906], 1 Ch. 148.

Directors who are remunerated for their services are not entitled, in the absence of a resolution of the Company or a provision in the Articles, to be paid out of the assets of the Company their travelling expenses incurred in attending Board Meetings.—*Young v. The Naval, Military and Civil Service Co-operative Society of South Africa, Ltd.* [1905], 1 K.B. 687.

70. The qualification of a Director shall be the holding of at least one share in the Company, and it shall be his duty to comply with the provisions of Section seventy-three of the Companies (Consolidation) Act, 1908.

71. The business of the Company shall be managed by the Directors, who may pay all expenses incurred in getting up and registering the Company, and may exercise all such powers of the Company as are not, by the Companies (Consolidation) Act, 1908, or any statutory modification thereof for the time being in force, or by these Articles, required to be exercised by the Company in general meeting, subject nevertheless to any regulation of these Articles, to the provisions of the said Act, and to such regulations, being not inconsistent with the aforesaid regulations or provisions, as may be prescribed by the Company in general meeting; but no regulation made by the Company in general meeting shall invalidate any prior act of the Directors which would have been valid if that regulation had not been made.

72. The Directors may from time to time appoint one or more of their body to the office of Managing Director or Manager for such term, and at such remuneration (whether by way of salary, or commission, or participation in profits or partly in one way and partly in another) as they think fit, and a Director so appointed shall not, while holding that office, be subject to retirement by rotation, or taken into account in determining the rotation of retirement of Directors; but his appointment shall be subject to determination *ipso facto* if he ceases from any cause to be a Director, or if the Company in general meeting resolve that

his tenure of the office of Managing Director or Manager be determined.

See Chapter X for remarks as to remuneration of a Managing Director.

73. The amount for the time being remaining undischarged of moneys borrowed or raised by the Directors for the purposes of the Company (otherwise than by the issue of share capital) shall not at any time exceed the issued share capital of the Company without the sanction of the Company in general meeting.

74. The Directors shall duly comply with the provisions of the Companies (Consolidation) Act, 1908, or any statutory modification thereof for the time being in force, and in particular with the provisions in regard to the registration of the particulars of mortgages and charges affecting the property of the Company, or credited by it, and to keeping a register of the Directors, and to sending to the Registrar of Companies an annual list of members, and a summary of particulars relating thereto, and notice of any consolidation or increase of share capital, or conversion of shares into stock, and copies of special resolutions, and a copy of the register of Directors and notifications of any changes therein.

75. The Directors shall cause minutes to be made in books provided for the purpose—

(a) of all appointments of Officers made by the Directors ;

(b) of the names of the Directors present at each meeting of the Directors and of any Committee of the Directors ;

(c) of all resolutions and proceedings at all meetings of the Company, and of the Directors, and of Committees of Directors,

and every Director present at any meeting of Directors or Committee of Directors shall sign his name in a book to be kept for that purpose.

76. The seal of the Company shall not be affixed to any instrument except by the authority of a resolution of the

The Seal. Board of Directors, and in the presence of at

least two Directors and of the Secretary or such other person as the Directors may appoint for the

purpose; and those two Directors and Secretary or other person as aforesaid shall sign every instrument to which the seal of the Company is so affixed in their presence.

77. The Office of Director shall be vacated, if the Director—
 Disqualifications of Directors. (a) ceases to be a Director by virtue of Section seventy-three of the Companies (Consolidation) Act, 1908; or

(b) holds any other office of profit under the Company except that of Managing Director or Manager; or

(c) becomes bankrupt; or

(d) is found lunatic or becomes of unsound mind; or

(e) is concerned or participates in the profits of any contract with the Company:

Provided, however, that no Director shall vacate his office by reason of his being a member of any Company which has entered into contracts with or done any work for the Company of which he is Director; but a Director shall not vote in respect of any such contract or work, and if he does so vote his vote shall not be counted.

78. At the first ordinary meeting of the Company the whole of the Directors shall retire from office, and at the ordinary meeting in every subsequent year
 Rotation of Directors. one-third of the Directors for the time being, or, if their number is not three or a multiple of three, then the number nearest to one-third, shall retire from office.

The Articles of Association of a Company provided that at the ordinary meeting in 1906 all the Directors should retire from office. No ordinary meeting was called or held in 1906 or 1907. It was held (Sargant, J.), that all the Directors vacated office on 31st December, 1906, being the last day on which a meeting of the Company for that year could have been held.—*In re Consolidated Nickel Mines, Ltd.*, 30 T.L.R. 407.

79. The Directors to retire in every year shall be those who have been longest in office since their last election, but as between persons who became Directors on the same day those to retire shall (unless they otherwise agree among themselves) be determined by lot.

80. A retiring Director shall be eligible for re-election.

81. The Company at the general meeting at which a Director retires in manner aforesaid may fill up the vacated office by electing a person thereto.

82. If at any meeting at which an election of Directors ought to take place the places of the vacating Directors are not filled up, the meeting shall stand adjourned till the same day in the next week at the same time and place, and, if at the adjourned meeting the places of the vacating Directors are not filled up, the vacating Directors, or such of them as have not had their places filled up, shall be deemed to have been re-elected at the adjourned meeting.

83. The Company may from time to time in general meeting increase or reduce the number of Directors, and may also determine in what rotation the increased or reduced number is to go out of office.

84. Any casual vacancy occurring in the Board of Directors may be filled up by the Directors, but the person so chosen shall be subject to retirement at the same time as if he had become a Director on the day on which the Director in whose place he is appointed was last elected a Director.

85. The Directors shall have power at any time, and from time to time, to appoint a person as an additional Director who shall retire from office at the next following ordinary general meeting, but shall be eligible for election by the Company at that meeting as an additional Director.

86. The Company may by extraordinary resolution remove any Director before the expiration of his period of office, and may by an ordinary resolution appoint another person in his stead; the person so appointed shall be subject to retirement at the same time as if he had become a Director on the day on which the Director in whose place he is appointed was last elected a Director.

87. The Directors may meet together for the despatch of business, adjourn, and otherwise regulate their meetings,

as they think fit. Questions arising at any meeting shall be decided by a majority of votes.

In case of an equality of votes the Chairman shall have a second or casting vote. A Director may, and

Proceedings of
Directors.

the Secretary on the requisition of a Director shall, at any time summon a meeting of the Directors.

88. The quorum necessary for the transaction of the business of the Directors may be fixed by the Directors, and unless so fixed shall (when the number of Directors exceeds three) be three.

89. The continuing Directors may act notwithstanding any vacancy in their body, but, if and so long as their number is reduced below the number fixed by or pursuant to the regulations of the Company as the necessary quorum of Directors, the continuing Directors may act for the purpose of increasing the number of Directors to that number, or of summoning a general meeting of the Company, but for no other purpose.

90. The Directors may elect a Chairman of their meetings and determine the period for which he is to hold office ; but, if no such Chairman is elected, or if at any meeting the Chairman is not present within five minutes after the time appointed for holding the same, the Directors present may choose one of their number to be Chairman of the meeting.

91. The Directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit ; any committee so formed shall in the exercise of the powers so delegated conform to any regulations that may be imposed on them by the Directors.

92. A committee may elect a Chairman of their meetings : if no such Chairman is elected, or if at any meeting the Chairman is not present within five minutes after the time appointed for holding the same, the members present may choose one of their number to be Chairman of the meeting.

93. A committee may meet and adjourn as they think proper. Questions arising at any meeting shall be determined by a majority of votes of the members present, and in case of an equality of votes the Chairman shall have a second or casting vote.

94. All acts done by any meeting of the Directors or of a Committee of Directors, or by any person acting as a Director,

shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such Directors or persons acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a Director.

95. The Company in general meeting may declare dividends, but no dividend shall exceed the amount recommended by the Directors.

Dividends and Reserve.

The word "dividend" in its ordinary sense means the sum paid and received, or the quotient forming the share of the divisible sum payable to the recipient.—*Lamplough v. Kent Waterworks Proprietors* [1904], A.C. 27.

The Articles of a Company provided for the submission of Accounts up to a date within three months and reports thereon, the sanction of a dividend, and the transaction of the ordinary business at the Annual General Meeting. It was held by North, J., that a final dividend could not be sanctioned except at an Annual General Meeting, at which Accounts up to the prescribed date and reports thereon were submitted.—*Nicholson v. Rhodesia Trading Co., Ltd.* [1897], 1 Ch. 434.

96. The Directors may from time to time pay to the members such interim dividends as appear to the Directors to be justified by the profits of the Company.

97. No dividend shall be paid otherwise than out of profits.

As to profits available for dividend, see Chapter XIV.

"Profits available for dividend" mean the net profits after making any deductions which Directors can properly make before declaring a dividend.—*Fisher v. Black and White Publishing Co., Ltd.* [1901], 1 Ch. 174.

A Company's capital consisted of 5 per cent cumulative preference shares and ordinary shares, the preference shares having priority both as to capital and dividend, and the preferential dividend being payable before any profits could be carried to reserve.

The articles provided that no dividend should be payable except out of profits, and that, in the event of the company being wound up, the surplus divisible assets for the time being remaining "after paying the liabilities of the company" should be applied first in repaying the preference capital and "secondly in paying the arrears (if any) of the 5 per cent preferential dividends thereon to the commencement of the winding up." The remainder of the surplus assets was to belong to the ordinary shareholders,

No dividends were ever declared, but the profits accumulated until the company was wound up—

Held, that the preference shareholders were entitled to their arrears of preferential dividends, though not declared, but only to the extent of the accumulated profits.

In *re Crighton's Oil Co.* [1901] 2 Ch. 184 [1902] 2 Ch. 86, Distinguished. In *re W. J. Hall & Co., Limited* [1909] 1 Ch. 521.

98. Subject to the rights of persons, if any, entitled to shares with special rights as to dividends, all dividends shall be declared and paid according to the amounts paid on the shares, but if and so long as nothing is paid up on any of the shares in the Company dividends may be declared and paid according to the amounts of the shares. No amount paid on a share in advance of calls shall, while carrying interest, be treated for the purposes of this article as paid on the share.

Where a Company issues preference shares carrying dividend at 10 per cent per annum, payable half-yearly, and with no words restricting the holders of such shares to the profits of the current year, the deficiency in the profits of any one year to pay the 10 per cent in full was, as between the preference and ordinary shareholder, to be made good out of subsequent profits.—*Foster v. Coles and M. B. Foster & Sons, Ltd.* [1906], W.N. 107.

If the yearly profits are divisible among the holders of the ordinary shares, subject to the half-yearly dividend to the holders of the preference shares, the preference dividend is not cumulative.—*Adair v. Old Bushmills Distillery Co., Ltd.* [1908], W.N. 24.

99. The Directors may, before recommending any dividend, set aside out of the profits of the Company such sums as they think proper as a reserve or reserves which shall, at the discretion of the Directors, be applicable for meeting contingencies, or for equalizing dividends, or for any other purpose to which the profits of the Company may be properly applied, and pending such application may, at the like discretion, either be employed in the business of the Company or be invested in such investments (other than shares of the Company) as the Directors may from time to time think fit.

100. If several persons are registered as joint holders of any share, any one of them may give effectual receipts for any dividend payable on the share.

101. Notice of any dividend that may have been declared

shall be given in manner hereinafter mentioned to the persons entitled to share therein.

102. No dividend shall bear interest against the Company.

103. The Directors shall cause true accounts to be kept—

Of the sums of money received and expended
Accounts. by the Company and the matter in respect of
which such receipt and expenditure takes place; and
Of the assets and liabilities of the Company.

Directors keeping fraudulent accounts are, by 24 & 25 Vict. c. 96, ss. 81-84 (*see post*), guilty of a misdemeanour.

104. The books of account shall be kept at the registered office of the Company, or at such other place or places as the Directors think fit, and shall always be open to the inspection of the Directors.

105. The Directors shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of the Company or any of them shall be open to the inspection of members not being Directors, and no member (not being a Director) shall have any right of inspecting any account or book or document of the Company except as conferred by statute or authorized by the Directors or by the Company in general meeting.

106. Once at least in every year the Directors shall lay before the Company in general meeting a profit and loss account for the period since the preceding account or (in the case of the first account) since the incorporation of the Company, made up to a date not more than six months before such meeting.

For remarks on the various items of income and expenditure which must appear in profit and loss accounts, *see* Chapter X. For difference between a profit and loss account and a cash account, *see* Chapter VII.

107. A balance sheet shall be made out in every year and laid before the Company in general meeting made up to a date not more than six months before such meeting. The balance sheet shall be accompanied by a report of the Directors

as to the state of the Company's affairs, and the amount which they recommend to be paid by way of dividend, and the amount, if any, which they propose to carry to a reserve fund.

See Chapters XI and XII for remarks on the various items which ordinarily occur in this statement.

108. A copy of the balance sheet and report shall, seven days previously to the meeting, be sent to the persons entitled to receive notices of general meetings in the manner in which notices are to be given hereunder.

The Articles of Association of the majority of Companies require a copy of the profit and loss account to be issued with the balance sheet.

Section 113 of the Act does not make it compulsory for the report of the Auditors to be attached to the balance sheet, and only requires it to be read to those shareholders who attend the general meeting.

109. Auditors shall be appointed and their duties regulated in accordance with Sections one hundred and twelve and one hundred and thirteen of the Companies (Consolidation) Act, 1908, or any statutory modification thereof for the time being in force.

Audit. 110. A notice may be given by the Company to any member either personally or by sending it by post to him to his registered address, or (if he has no registered address in the United Kingdom) to the address, if any, within the United Kingdom supplied by him to the Company for the giving of notices to him.

Notices.

Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying, and posting a letter containing the notice, and unless the contrary is proved to have been effected at the time at which the letter would be delivered in the ordinary course of post.

111. If a member has no registered address in the United Kingdom and has not supplied to the Company an address within the United Kingdom for the giving of notices to him, a notice addressed to him and advertised in a newspaper

circulating in the neighbourhood of the registered office of the Company, shall be deemed to be duly given to him on the day on which the advertisement appears.

112. A notice may be given by the Company to the joint holders of a share by giving the notice to the joint holder named first in the register in respect of the share.

113. A notice may be given by the Company to the persons entitled to a share in consequence of the death or bankruptcy of a member by sending it through the post in a prepaid letter addressed to them by name, or by the title of representatives of the deceased, or trustee of the bankrupt, or by any like description, at the address, if any, in the United Kingdom supplied for the purpose by persons claiming to be so entitled, or (until such an address has been so supplied) by giving the notice in any manner in which the same might have been given if the death or bankruptcy had not occurred.

114. Notice of every general meeting shall be given in some manner hereinbefore authorized to (a) every member of the Company (including bearers of share warrants) except those members who (having no registered address within the United Kingdom) have not supplied to the Company an address within the United Kingdom for the giving of notices to them, and also to (b) every person entitled to a share in consequence of the death or bankruptcy of a member, who, but for his death or bankruptcy, would be entitled to receive notice of the meeting. No other person shall be entitled to receive notices of general meetings.

FORM B

MEMORANDUM AND ARTICLES OF ASSOCIATION OF A COMPANY LIMITED BY GUARANTEE, AND NOT HAVING A SHARE CAPITAL

1. The Company, for the purpose of registration, is declared to consist of five hundred members.

Number of
Members.

2. The Directors hereinafter mentioned may, whenever the business of the association requires it, register an increase of members,

3. Every person shall be deemed to have agreed to become a member of the Company who insures any ship or share in a ship in pursuance of the regulations hereinafter contained.

Definition of
Members.

4. The first general meeting shall be held at such time, not being less than one month nor more than three months after the incorporation of the Company, and at such place, as the Directors

General
Meetings.

may determine.

5. A general meeting shall be held once in every year at such time (not being more than fifteen months after the holding of the last preceding general meeting) and place as may be prescribed by the Company in general meeting, or, in default, at such time in the month following that in which the anniversary of the Company's incorporation occurs, and at such place, as the Directors shall appoint. In default of a general meeting being so held, a general meeting shall be held in the month next following, and may be convened by any two members in the same manner as nearly as possible as that in which meetings are to be convened by the Directors.

6. The above-mentioned general meetings shall be called ordinary meetings; all other general meetings shall be called extraordinary.

7. The Directors may, whenever they think fit, and shall, on a requisition made in writing by any five or more members, convene an extraordinary general meeting.

8. Any requisition made by the members must state the object of the meeting proposed to be called, and must be signed by the requisitionists and deposited at the registered office of the Company.

9. On receipt of the requisition the Directors shall forthwith proceed to convene a general meeting: if they do not proceed to cause a meeting to be held within twenty-one days from the date of the requisition being so deposited, the requisitionists, or any other five members, may themselves convene a meeting.

10. Seven days' notice at the least, specifying the place,

the day, and the hour of meeting, and in case of special business the general nature of the business, shall be given to the members in manner hereinafter mentioned, or in such other manner, if any, as may be prescribed by the Company in general meeting ; but the non-receipt of such a notice by any member shall not invalidate the proceedings at any general meeting.

**Proceedings
at General
Meetings.**

11. All business shall be deemed special that is transacted at an extraordinary meeting, and all that is transacted at an ordinary meeting, with the exception of the consideration of the accounts, balance sheets, and the ordinary report of the Directors and Auditors, the election of Directors and other officers in the place of those retiring by rotation, and the fixing of the remuneration of the Auditors.

12. No business shall be transacted at any meeting except the declaration of a dividend, unless a quorum of members is present at the commencement of the business. The quorum shall be ascertained as follows (that is to say), if the members of the Company at the time of the meeting do not exceed ten in number, the quorum shall be five ; if they exceed ten there shall be added to the above quorum one for every five additional members up to fifty, and one for every ten additional members after fifty, with this limitation, that no quorum shall in any case exceed thirty.

13. If within one hour from the time appointed for the meeting a quorum of members is not present, the meeting, if convened on the requisition of the members, shall be dissolved ; in any other case it shall stand adjourned to the same day in the following week at the same time and place ; and if at such adjourned meeting a quorum of members is not present, it shall be adjourned *sine die*.

14. The Chairman (if any) of the Directors shall preside as Chairman at every general meeting of the Company.

15. If there is no such Chairman, or if at any meeting he is not present at the time of holding the same, the members present shall choose some one of their number to be Chairman of that meeting.

16. The Chairman may, with the consent of the meeting,

adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

17. At any general meeting, unless a poll is demanded by at least three members, a declaration by the Chairman that a resolution has been carried and an entry to that effect in the book of proceedings of the Company, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against the resolution.

18. If a poll is demanded in manner aforesaid, the same shall be taken in such manner as the Chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

19. Every member shall have one vote and
Votes of
Members. no more.

20. If any member is a lunatic or idiot he may vote by his committee, *curator bonis*, or other legal curator.

21. No member shall be entitled to vote at any meeting unless all moneys due from him to the Company have been paid.

22. On a poll votes may be given either personally or by proxy. A proxy shall be appointed in writing under the hand of the appointor, or if such appointor is a Corporation, under its common seal.

23. No person shall act as a proxy unless he is a member, or unless he is appointed to act at the meeting as proxy for a Corporation.

The instrument appointing him shall be deposited at the registered office of the Company not less than forty-eight hours before the time of holding the meeting at which he proposes to vote.

See Note to clause 65 of Table A.

24. Any instrument appointing a proxy shall be in the following form—

Company, Limited.

“ I, of in the county of
being a Member of the Company, Limited,

prepaying, and posting a letter containing the notice, and unless the contrary is proved to have been effected at the time at which the letter would be delivered in the ordinary course of post.

FORM C

MEMORANDUM AND ARTICLES OF ASSOCIATION OF A COMPANY
LIMITED BY GUARANTEE, AND HAVING A SHARE CAPITAL

1. The Directors may, with the sanction of the Company in general meeting, reduce the amount of shares in the Company.

2. The Directors may, with the sanction of the Company in general meeting, cancel any shares belonging to the Company.

3. All the Articles of Table A of the Companies (Consolidation) Act, 1908, shall be deemed to be incorporated with these Articles and to apply to the Company.

FORM D

MEMORANDUM AND ARTICLES OF ASSOCIATION OF AN
UNLIMITED COMPANY HAVING A SHARE CAPITAL

1. The share capital of the Company is two thousand pounds, divided into twenty shares of one hundred pounds each.

2. All the Articles of Table A of the Companies (Consolidation) Act, 1908, shall be deemed to be incorporated with these articles, and to apply to the Company.

THE COMPANIES ACT, 1913

(3 & 4 George V, c. 25.)

[15th August, 1913.]

1.—(1) Where the Articles of a Company include the provisions which, by section one hundred and twenty-one of the Companies (Consolidation) Act, 1908, as amended by this Act, are required to be included therein in order to constitute the Company a private Company for the purposes of that Act, and default is made in complying with any of

**Amendment of
the law
relating to
Private
Companies.**

those provisions, the Company shall cease to be entitled to the privileges and exemptions conferred on private Companies under the provisions of that Act mentioned in the Schedule to this Act, and thereupon the said provisions shall apply to the Company as if it were not a private Company :

Provided that the Court, on being satisfied that the failure to comply with the conditions was accidental or due to inadvertence or to some other sufficient cause, or that on other grounds it is just and equitable to grant relief, may, on the application of the Company or any other person interested and on such terms and conditions as seem to the Court just and expedient, order that the Company be relieved from such consequences as aforesaid.

(2) In Sub-section (1) of the said Section one hundred and twenty-one of the Companies (Consolidation) Act, 1908, for paragraph (b) the following paragraph shall be substituted—

“(b) limits the number of its members (exclusive of persons who are in the employment of the Company and of persons who having been formerly in the employment of the Company, were while in such employment and have continued after the determination of such employment to be members of the Company) to fifty ; and ”

(3) Every private Company shall send with the annual list of members and summary required to be sent under Section twenty-six of the Companies (Consolidation) Act, 1908, a certificate signed by a Director or the Secretary that the Company has not, since the date of the last return, or in the case of a first return since the date of the incorporation of the Company, issued any invitation to the public to subscribe for any shares or debentures of the Company and when the list of members discloses the fact that the number of members of the Company exceeds fifty, also a certificate so signed that such excess consists wholly of persons who under Section one hundred and twenty-one of that Act, as amended by this section, are to be excluded in reckoning the number of fifty.

SCHEDULE

PROVISIONS OF THE COMPANIES (CONSOLIDATION) ACT,
1908

Sub-section (3) of Section twenty-six (which relates to the making of an annual return in the form of a Balance Sheet).

Section one hundred and fourteen (which relates to the right of preference shareholders and debenture-holders to receive and inspect Balance Sheets and Reports).

Section one hundred and fifteen (which relates to the minimum number of members with which a Company may continue to carry on business).

Paragraph (iv) of Section one hundred and twenty-nine (which makes the reduction of the number of members of a Company below the minimum a ground for the winding up of the Company).

THE MORTGAGE DEBENTURE ACT, 1865.

(28 & 29 Vict., c. 78.)

[29th June, 1865.]

2. This Act shall extend and apply to, and the powers hereby conferred may be exercised by, all such Companies
 Extent of Act. incorporated and carrying on business under the Companies Act, 1862, or under any Act of Parliament, as now or hereafter may be entitled to advance money on the security of land; and in the construction of this Act the expression "the Company" means any Company to which this Act applies, and which shall for the time being be availing itself of the provisions of this Act.

3. No Company shall be entitled to avail itself of this Act unless it shall comply with the following provisions—

No Company to avail itself of Act unless it shall comply with Provisions herein named.

First. The Company must, under its Act of Parliament or Memorandum of Association, be limited to one or more of the following objects—

(1) The making of advances of money upon any of the following Securities—

(a) Lands, messuages, hereditaments, and real property and all estates and interests therein :

(b) Rates, dues, assessments, and impositions upon the owners or occupiers of lands or real property imposed by or under the authority of any Act of Parliament, public or private, Royal Charter, Commission of Sewers or Drainage, or other sufficient legal authority :

(c) Charges and Securities upon or affecting lands, messuages, hereditaments, and real property executed, made, given, or issued under the authority of any Act of Parliament, public or private :

(2) The borrowing of money on transferable Mortgage Debentures, or on one or more of the Securities above-mentioned :

Provided that any Company already constituted under the Companies Act, 1862, for the purpose of making advances on real Securities: and whose Memorandum of Association includes but is not limited to the objects hereinbefore specified, may, by special resolution in accordance with the provisions of that Act, alter its Memorandum for the purpose of limiting and so as to limit its objects and business to those so specified ; and such Company shall thereupon be and become a Company constituted and carrying on business under such altered Memorandum, and on its being shown to the satisfaction of the Registrar hereinafter mentioned that such alteration has been made, and that all obligations, if any, entered into by the Company in respect of the business which prior to such special resolution it was empowered to transact, other than the business to which it will be limited after the passing of such special resolution, have been discharged, and that the Articles of Association of the Company are in accordance with the altered Memorandum, such Company shall be deemed to be a Company within this Act and entitled to the benefits thereof :

Second. The Company must have a paid-up capital of not less than one hundred thousand pounds :

Third. Each share must be of the nominal value of not

less than fifty pounds, of which not less than one-tenth nor more than one-half must have been paid up.

Power to
Company to
borrow Money
on Mortgage
Debentures.

4. Subject to the provisions and restrictions of this Act, the Company may from time to time borrow money upon Mortgage Debentures to be issued by it under the authority of this Act.

7. For the purposes of such registration there shall be established in such Office of Land Registry, in respect of every Company issuing Mortgage Debentures under this Act, a Register, with the name of the Company attached, which shall be called a Register of Securities under the Mortgage Debenture Act, 1865.

Register of
Securities to
be established
in office of
Land Registry.

Registrar of
Titles, etc.,
to conduct
Business of
Register.

8. The business of the registration shall be conducted in such office in accordance with such rules and regulations as the Registrar, with the sanction of the Lord Chancellor, from time to time shall prescribe.

9. Upon production to and deposit with the Registrar of the deeds or instruments purporting to be duly executed and stamped as aforesaid, together with a certificate under the common seal of the Company and the hands of one or more Directors and of the Secretary or Accountant of the Company, in the form or to the effect of Form (A) in the Schedule hereto, and in the cases hereinafter mentioned of the certificate of a Surveyor as hereinafter provided, the Registrar shall enter in the proper Register of Securities the date of every such deed or other instrument, its nature, whether mortgage, grant of annuity,

Upon Deposit
with Registrar
of Securities
held by Com-
pany, and the
Deeds relating
thereto, and
Certificate of
Company and
Declaration of
Surveyor,
Registrar may
register Deed
creating
Security.

rentcharge, or other security, the amount of the principal money or the amount and duration of the annuity thereby secured, and the tenure, extent, and situation of the property upon which the security is taken : Provided always that the Registrar shall not register any deed or instrument relating

to or affecting any property not situate in *England* or *Wales*.

11. Upon the securities so from time to time registered, the Company may found and issue its Mortgage Debentures, but so that the aggregate principal sum secured by all the Mortgage Debentures shall never exceed at any one time the then total amount (to be ascertained in the manner hereinafter provided) of the registered securities of the Company, and also shall never exceed ten times the amount for the time being uncalled of its subscribed share capital.

Power to Com-
pany to issue
Debentures
not exceeding
Amount of
registered
Securities, etc.

13. If and whenever any of such Mortgage Debentures shall be paid off by the Company, the Company may issue new Mortgage Debentures in lieu thereof, and so from time to time, provided that the aggregate principal sum secured by all the Mortgage Debentures then issued and outstanding shall not exceed either of the before-mentioned limits.

Company may
issue new
Debentures in
lieu of those
paid off.

15. The persons from time to time entitled to the Company's Mortgage Debentures shall, proportionally, according to the amount of the moneys secured thereby, be entitled one with another to the benefit of the registered securities of the Company upon which such Mortgage Debentures are founded, without any preference one above another by reason of priority of the date of any such Mortgage Debenture or otherwise.

Rights of
Holders of
Mortgage
Debentures.

21. When and so long as the Company issues any Mortgage Debentures under this Act, and from time to time so long as any Mortgage Debenture so issued remains outstanding, the Company shall, within ten days after every quarter-day as hereinafter defined, make out and deliver to the Registrar the Quarterly Return by this Act prescribed; and every Quarterly Return shall be verified by the statutory declaration of two Directors, and the Manager, Secretary, or Accountant of the Company.

Company to
make Quarterly
Returns to
Registrar.

22. The thirty-first day of *March*, the thirtieth day of *June*, the thirtieth day of *September*, and the thirty-first day of *December* in every year shall be the quarter days for the purposes of this Act.

23. Every Quarterly Return to be made by the Company to the Registrar shall be in the form set forth in Form (C) in the Schedule to this Act, or as near thereto as circumstances may admit, and shall contain, with reference to the then last quarterly day, the following particulars—

Quarterly
Returns made
to Registrar to
be as in Form
(C) in Schedule,
and to contain
Particulars
herein named.

(a) An account of all the securities of the Company's at that time registered, showing the aggregate of all principal sums remaining secured thereby and unpaid, and showing also the aggregate amount or the aggregate estimated value of all annuities and other periodical payments secured thereby :

(b) An account showing the aggregate amount and the estimated value of the Company's other investments, and also the total number and aggregate nominal amount of the shares of the Company's capital held by persons registered in the Company's books as the holders thereof, and the aggregate amount paid up in respect of those registered shares, and the aggregate amount remaining to be paid thereon :

(c) The numbers and dates of the several Mortgage Debentures issued by the Company and remaining in force, and the several principal sums secured by those Mortgage Debentures respectively, and the aggregate amount thereof, and the rates of interest payable on those principal sums respectively, and the time or times for the repayment of those principal sums respectively.

See additional particulars required by the Mortgage Debenture (Amendment) Act, 1870, Section 12.

25. The aggregate of all principal sums remaining secured by the registered securities, together with the aggregate amount or value of the said annuities as so ascertained or estimated, shall, for the purposes of this Act, be deemed to be the total amount for the time being of the registered securities of the Company.

Total Amount
of registered
Securities.

27. The Company shall keep a Register, to be called the "Register of Securities," in which shall be entered the date of every deed or other instrument registered at the Land Registry for the purposes of this Act, its nature, whether mortgage, grant of annuity, rentcharge, or other security, the amount of the principal money, or the amount and duration of the annuity thereby secured, the tenure, extent, and situation of the property upon which the security is taken, and if there are any charges which take priority of the Company's security, then the amount of such prior charges.

29. The Mortgage Debentures shall be numbered consecutively, beginning with number one, and every Mortgage Debenture shall be distinguished by its appropriate number; and notwithstanding the cancellation, loss, or destruction of a Mortgage Debenture, no other Mortgage Debenture shall bear the number of that so cancelled, lost, or destroyed.

31. A book containing a list of Mortgage Debentures shall be kept by the Company's Secretary, and on the issue of any Mortgage Debenture an entry of the number and date thereof, and of the principal money secured thereby, and the name, description, and residence of the person to whom it is issued shall be entered in such book.

32. There shall also be established and kept in the Office of Land Registry, by or under the direction of the Registrar, in respect of every Company issuing Mortgage Debentures under this Act, a Register of the Mortgage Debentures of the Company.

33. When any Mortgage Debenture of the Company is duly executed and stamped, the Company shall produce it to the Registrar, in order to its being registered, and thereupon the Registrar shall enter in the Register of Mortgage Debentures the number and the date of the Mortgage Debenture, the amount

of the principal money thereby secured, and the time or times for repayment of the principal money thereby secured, and shall make on the Mortgage Debenture an indorsement stating the day on which the Mortgage Debenture was produced to him for registration, and of the page of the book in which the entry thereof is made; and without such an indorsement no Mortgage Debenture shall be a charge under this Act upon the registered securities of the Company.

No Notice of Trust receivable by Company. 35. No notice of any trust in respect of any Mortgage Debenture shall be receivable by the Company.

Not exempt from Joint Stock Companies Acts. 52. This Act shall not exempt the Company from the provisions of any Act relating to Joint Stock Companies, and applicable to the Company.

THE MORTGAGE DEBENTURE (AMENDMENT) ACT, 1870.

(33 & 34 Vict., c. 20.)

[4th July, 1870.]

This Act and 28 & 29 Vict. c. 78, to be construed together. 1. This Act shall be construed as one with the Mortgage Debenture Act, 1865 (which is hereinafter referred to as "the Principal Act"), and may be cited for all purposes as "The Mortgage Debenture (Amendment) Act, 1870."

Nature of Securities on which Debentures may be founded. 4. The Securities upon and in respect of which Mortgage Debentures may be founded and issued under the authority of the principal Act shall be Securities affecting property in England or Wales of the following descriptions—

(a) Lands, messuages, hereditaments, or real property, or some estate or interest therein :

(b) Rates, dues, assessments, or impositions upon the owners or occupiers of lands, messuages, hereditaments, or real property imposed by or under the authority of any Act of Parliament, public or private, Royal Charter, Commission of Sewers or Drainage, or other sufficient legal authority :

(c) Charges upon or affecting lands, messuages, hereditaments, or real property executed, made, given, or issued under the authority of any Act of Parliament, public or private :

But from the securities described in paragraph (a) shall be excepted securities upon mines or mineral property, quarries, brickfields, and factories, mills, and other buildings or works for manufacturing purposes, and also securities upon leasehold estates determinable upon a life or lives, and not renewable, or held for a term of which at the date of the security less than fifty years shall be unexpired, or which are held at a rent beyond one-fourth part of the annual value of the property leased as estimated at the date of the security given to the Company and verified by the statutory declaration of a Surveyor as hereinafter provided with respect to the value of the securities to be registered.

In construing this Act the word "Securities" shall be deemed to mean such securities as above defined and restricted, and no others.

6. Before any Company shall be entitled to avail itself of the provisions of the principal Act and this Act such Company shall file in the Office of the Land Registry a return containing the following and such other particulars as the Registrar may from time to time require, which return shall be under the hand of one, at least, of the Directors of the Company and the Secretary.

Company to
file Return in
office of Land
Registry.

(a) The amount of the nominal capital of the Company :

(b) The amount per share and the aggregate amount paid up on the shares ;

(c) The assets or property of the Company at the date of the return, and how invested :

(d) The names, addresses, and occupations of the Directors and Auditors of the Company :

(e) The registered office of the Company.

7. All the registered securities for the time being of the Company shall be charged with the payment of the principal moneys and interest from time to time payable upon or in respect of all the Mortgage Debentures of the Company for the time being issued and outstanding, and no registered security until discharged therefrom, as hereinafter provided, shall be applicable to or available for any other purpose than the satisfaction of such principal moneys and interest, or be transferred, disposed of, or otherwise dealt with by the Company unless, and until the same shall have been discharged from registration in the manner hereinafter provided : Provided, nevertheless, that such registration shall not prevent the Company from receiving, applying, and giving a valid discharge for any instalments payable by the terms of the deed creating the security or any annuities or interest which may from time to time be receivable upon or in respect of any such security, unless where a Receiver shall have been actually appointed under the provisions of the principal Act.

11. Subject to the regulations mentioned in Section 19 of the principal Act, and on payment of such fees as the Registrar with the sanction of the Lord Chancellor from time to time prescribes, any person may inspect and make copies of and extracts from the Register of Securities, the Register of Mortgage Debentures, and the returns made by the Company to the Registrar under the provisions of the principal Act.

12. In addition to the particulars required to be contained in the Quarterly Return to be made by the Company to the Registrar by the 23rd Section of the principal Act, every such Quarterly Return shall contain the following particulars—

(a) The names, addresses, and occupations of the Directors and Auditors of the Company :

(b) The registered office of the Company.

13. Where by any mortgage or other like security to the Company the principal is expressly distinguished from the interest, and such principal is made payable by periodical payments, the amount or value of such mortgage or security shall for the purpose of the Quarterly Returns be deemed to be the amount of principal money exclusive of interest remaining unpaid thereon at the date of the Quarterly Return.

Value of Mortgage or Security shall be deemed to be amount of principal money, etc., for purposes of Quarterly Returns.

14. In all cases not provided for by the last section the amount or value of the annuities and other periodical payments to be comprised in the Quarterly Returns shall be ascertained or estimated by an Actuary.

If not otherwise provided, value of annuities, etc., to be estimated by an Actuary.

16. The Mortgage Debentures shall be for the payment of principal sums, either at a fixed time to be named therein, not less than six months nor exceeding ten years from the date, or at any time on six calendar months' previous notice being given to the Company by the holder for the time being of the Mortgage Debenture, or by the Company to the holder for the time being of the Mortgage Debenture with interest thereon in the meantime at such rate as may be agreed payable half-yearly or otherwise, and no Mortgage Debenture shall be issued for a less principal sum than fifty pounds.

Terms on which Mortgage Debentures may be issued.

Entry in Register of discharge of Mortgage Debenture.

17. When a Mortgage Debenture is produced by the Company to the Registrar discharged or cancelled, he shall make in the Register of Mortgage Debentures an entry of the discharge thereof.

18. Nothing in this Act shall exempt the Company from the provisions of any Act relating to Joint Stock Companies, and applicable to the Companies Acts.

Company not exempt from Joint Stock Companies Acts.

GUERNSEY

Law relating to Joint Stock Companies, or Companies with Limited Liability

Registered in Guernsey 21st March, 1908

III.—The Memorandum of Association shall be registered under an Act of the Royal Court of this Island, in a book specially kept for this purpose at the Greffe, which book shall bear the title of “Register of Companies Incorporated with Limited Liability.”

Establishment,
Constitution
and
Registration.

V.—The Articles of Association of the Company may be annexed to the Memorandum of Association and shall be registered under the same Act of Court. If the Articles be not registered with the Memorandum of Association, the founders must register them within six months from the date of the registration of the Memorandum of Association. In default of this formality being observed within the prescribed period the Memorandum of Association shall be void. In every case the Articles of Association must bear the signatures of all the founders, with a statement of their profession or rank and of their address, and, in the case where the Articles shall not have been registered at the same time as the Memorandum of Association, the demand for registration shall be made in the name of all the founders.

X.—Every Company shall be bound to have a registered office in this Island, where all writs, summonses, and other notices affecting the Company may be served, and where all notices to be given to the said Company may be delivered.

Name and
Office.

XV.—No allotment of any share capital of a Company which shall have offered its shares to the public by means of prospectus, advertisement, or other printed matter, shall be made unless—

Allotment of
Shares.

(a) The amount (if any) fixed by the Memorandum or Articles of Association and named in the prospectus as the minimum subscription upon which the Directors may proceed to allotment; or

(b) (If no amount is so fixed and named) the whole amount of the share capital so offered for subscription, has been subscribed, and the sum payable on application for the amount fixed and named, or for the whole amount, has been paid to and received by the Company. The amount so fixed

and named, and the whole amount aforesaid, shall be reckoned exclusively of any amount payable otherwise than in cash, and shall be considered by this Law as the minimum subscription.

The amount payable by each subscriber on each share shall not be less than five per centum of the nominal amount of the share.

The preceding conditions must be complied with within forty days from the offer of the Company's shares to the public. Unless this be done, all money received from subscribers shall be repaid to them without interest. If this refund has not taken place within the forty-eight days following the offer of the Company's shares to the public, the Directors of the Company shall be jointly and severally liable to repay that money with interest at the rate of five per centum per annum from the expiration of the forty-eight days. Provided that in the case of loss of money the Director shall not be liable if he proves that the said loss was not due to any misconduct or negligence on his part. This Article does not apply to the allotment of shares which follows the first allotment of shares offered to the public for subscription.

XX.—Whenever a Joint Stock Company makes any allotment of its shares, the Company shall within one month thereafter deposit with the King's Greffier—

(a) A return of the allotments, stating the number and the nominal amount of the shares which have been allotted, the names, rank or occupation of the allottees, and the amount (if any) paid or due and payable on each share : and

(b) (For shares allotted in whole or in part for a consideration other than cash) a document stating what is the title of the allottee to such allotment such as contract of sale or services rendered or what other consideration has necessitated this allotment, together with a return showing the numbers and the nominal amount of the shares allotted, and the extent to which they are to be treated as paid up.

The whole under a liability to a fine not exceeding fifty pounds sterling for every day during which the default continues against every Director, Manager, Secretary or other Officer of the Company who shall have knowingly committed the default.

For each return so deposited the Greffier shall be paid five shillings, and for each contract or document similarly deposited, five shillings.

XXI.—Upon any offer of shares for subscription, it shall be lawful for a Company to pay a commission to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares in the Company, or for procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the Company. But the payment of the commission and the amount or rate per centum of the commission paid or agreed to be paid must be respectively authorized by the Articles of Association and disclosed in the prospectus. The commission paid or agreed to be paid must not exceed the amount or rate so authorized.

XXII.—Except in the cases provided by the preceding Article, no Company shall apply any of its shares or capital-money, either directly or indirectly, in payment of any commission, discount, or allowance to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares of the Company, or procuring or agreeing to procure subscriptions for any shares in the Company, whether the shares or money be so applied by being added to the purchase money of any property acquired by the Company or to the contract price of any work to be executed for the Company, or if the money be paid out of the nominal purchase money or contract price, or otherwise. But nothing in this Article shall affect the power of any Company to pay brokerage.

XXIII.—Before a Company offering its shares to the public by means of a prospectus, advertisement or other printed matter shall commence any business or exercise any borrowing powers, it is necessary that

Duties
previous to
commencing
Business.

(a) Shares which should be completely paid up in cash shall have been allotted to an amount not less in the whole than the minimum subscription, and that—

(b) Every Director of the Company shall have paid to

the Company on each of the shares taken or contracted to be taken by him, and for which he is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares offered for public subscription, and that

(c) The Secretary or other Director has deposited with the King's Greffier a declaration that all the conditions above-mentioned have been complied with. The Greffier shall, on the deposit of this declaration, certify that the Company is entitled to commence business, and that certificate shall be conclusive evidence that the Company is so entitled. For each declaration the Greffier shall be paid five shillings.

XXVIII.—The post of Director of a Company shall be deemed vacant if the Director does not within two months from the date of his appointment, or within such shorter time as may be fixed by the Articles of the Company obtain his qualification, or if after this period or shorter time he ceases at any time to hold the specified number of shares. Any person vacating office for the above-mentioned reasons shall be incapable of being reappointed Director of the Company until he has obtained his qualification.

This Article does not apply to Companies registered before 21st April, 1908.

XXX.—If any person, in any Return, Report, Balance Sheet, Certificate or other document required by or for the purposes of this Law, wilfully makes a statement false in any material particular, knowing it to be false, he shall be guilty of a misdemeanour, and shall be liable to an imprisonment not exceeding two years, with or without hard labour.

XXXVII.—Every Joint Stock Company shall keep a book in which shall be regularly entered, at their proper dates, exact Minutes of the Proceedings, Resolutions and Voting of all General Meetings, Ordinary or Extraordinary, of its Shareholders, and of all Board Meetings of its Directors or Managers. These Minutes, after having been approved of by the Meeting *séance*

**Books to be
kept.**

tenante, shall be signed by the Chairman of the Meeting, and after having been written in the said book shall be confirmed at the following Meeting, the said confirmation, attested by the signature of the Chairman of the Meeting, and being so signed, shall be received as evidence of what has been done and decided at the said Meetings and Board Meetings.

XXXVIII.—The Directors or Managers of a Company established under this Law shall be bound to keep the following books : a Journal, a Ledger on the double-entry system, and a Cash Book. The transactions of the Company shall be regularly entered therein daily. They shall likewise keep a book containing, in order of date, a copy of every letter sent by the Company.

XXXIX.—Every Joint Stock Company shall have annually in this Island a General Meeting of its Shareholders ; the first Meeting shall be held within a period which may not be less than three months nor more than six months from the day on which the Company shall have the right to commence business. If the Annual General Meeting or the First Meeting above-mentioned is not held, the Company and each Managing Director, Secretary, and other Officers of the Company, who shall knowingly be a party to this default shall be liable to a fine, at the discretion of Justice, which shall not exceed one hundred pounds sterling.

XL.—The Directors shall, at least ten days before the day on which the meeting is to be held, forward to every shareholder in the Company a copy of a Report of which the original shall have been countersigned by not less than two Directors of the Company, or, where there are less than two Directors, by the sole Director or Manager. The said Report shall state—

(a) The total number of shares allotted, distinguishing shares allotted as fully or partly paid up otherwise than in cash, and stating (in the case of shares partly paid up) the extent to which they are so paid up, and in either case the consideration for which they have been allotted ;

(b) The total amount of cash received by the Company in respect of such shares, distinguished as aforesaid ;

(c) The amount of receipts of the Company during the year classified under different heads indicating the sources whence they come, together with the amount of expenses, also classified under different heads, showing the objects for which they have been incurred. If any expenses have been incurred during the year which are not for the needs of the current year solely, but for several years, such expenses may be apportioned over several years, provided that the reasons for this apportionment are clearly stated ; and in such a manner as to strike the actual balance between profits and losses accrued during that year ;

(d) The names, rank or occupations, and addresses of the Directors, Auditors (if any), Manager (if any), and Secretary of the Company ;

(e) Particulars of any contract or document, the modification of which is to be submitted to the meeting for its approval, together with particulars of the said modification.

The Report shall, so far as it relates to the shares allotted by the Company and to the cash received in respect of such shares, and to the receipts and payments of the Company, be certified as correct by the Auditors, if any, of the Company.

LII.—The capital of a Company shall not be employed in paying any dividend. Likewise no dividend shall be declared or paid except out of the profits or results of the business and operations of the Company.

LIII.—Every Company shall at each annual general meeting appoint an Auditor or Auditors, to hold office until the next annual general meeting.

Audit of
Accounts.

LIV.—If an appointment of Auditors is not made at an annual general meeting, the Court may, on the application of a shareholder or a creditor of the Company, appoint an Auditor of the Company for the current year, and fix the remuneration to be paid to him by the Company for his services.

LV.—A Director or Officer of the Company shall not be capable of being appointed Auditor.

LVI.—The first Auditors of the Company may be appointed by the Directors before the first general meeting, and if so appointed shall hold office until the first annual general meeting unless previously removed by a resolution of the shareholders in general meeting, in which case the shareholders at such meeting may appoint Auditors.

LVII.—The Directors of a Company may fill any casual vacancy in the office of Auditor, but while any such vacancy continues the surviving or continuing Auditor or Auditors, if any, may act.

The remuneration of the Auditors of a Company shall be fixed by the Company in general meeting, with this exception, that the remuneration of any Auditors appointed before the first general meeting, or to fill any casual vacancy, may be fixed by the Directors.

Every Auditor of a Company shall have a right of access at all times to the books and accounts and vouchers of the Company and shall be entitled to require from the Directors and Officers of the Company such information and explanation as may be necessary for the performance of the duties of the Auditors, and the Auditors shall sign a certificate at the foot of the Balance Sheet stating whether or not all their requirements as Auditors have been complied with, and shall make a report to the shareholders on the Accounts examined by them, and on every Balance Sheet laid before the Company in general meeting during their tenure of office; and in every such Report shall state whether, in their opinion, the Balance Sheet referred to in the Report is properly drawn up so as to exhibit a true and correct view of the state of the Company's affairs as shown by the books of the Company, and such Report shall be read before the Company in general meeting.

LXIV.—Every Joint Stock Company shall be bound to keep a Register, called "Register of Transfers," in which the following particulars shall be recorded—

Transfer of
Shares.

The names, rank or professions, and the addresses of all

and every one of its shareholders since the formation of the Company. And against the name of each shareholder—

(1) The number of shares of which he is proprietor or for which he is responsible, with the numbers of such shares, indicating those which have been allotted for cash, and those which have been allotted in whole or in part for a consideration other than cash ;

(2) The amount paid up on each share and the date of each payment.

(3) The date of the inscription of such shareholder's name on the said Register of the members or shareholders in the Company.

(4) The date on which such shareholder ceased to be the proprietor of each of the shares recorded against his name.

Every Company which shall omit or neglect to observe the provisions of this Article shall be liable to a fine not exceeding two pounds sterling for each day during which this Article is contravened.

LXV.—Every Joint Stock Company shall be bound to prepare during the month of January of each year a list of names, rank or professions, and addresses of
Annual List. all those persons who, on the first day of January of that same year, were shareholders in the said Company, and opposite the name of each shareholder the number of and the numbers of his shares and the amount paid up on each share ; the said list shall contain, further, the following particulars—

(1) The amount of capital and the number of shares into which it is divided, distinguishing those which have been issued for cash and those having been allotted in whole or in part for a consideration other than cash ;

(2) The number of shares issued since the formation of the Company up to the first day of January of the year in which the said list is drawn up.

(3) The number of calls made and the amount per share of each call by the Company on its members and the total amount of capital which has been called up for payment by means of such calls ;

(4) The amount received by the said Company on the said calls of capital ;

(5) The amount still payable to the said Company on further calls of capital ;

(6) The names and addresses of the persons who, at the date of the report, are Directors of the Company.

(7) The actual address of the registered office of the Company.

And in cases where, under the Articles of the Company, the penalty incurred by shareholders who neglect to conform to the conditions of payment of the amount of their shares is the confiscation of those shares, the said list shall contain—

(a) The number of shares which have been declared confiscated ;

(b) The total number received by the Company on such shares before confiscation ;

(c) The amount received by the Company from the sale of such shares after confiscation.

This list shall be registered in a register kept for this purpose by the Company, and a copy of the same, under the seal of the Company, shall be delivered within the time specified at the commencement of this Article to the King's Greffier and shall remain deposited at the Greffe.

For each list so deposited the Greffier shall be paid a fee of five shillings.

LXXIX.—Where in the course of the winding up of a Company under this Law it appears that any person who has taken part in the formation or promotion of the Company, or any past or present Director, Manager, Liquidator, or other Officer of the Company has misapplied or retained or become liable or accountable for any moneys or property of the Company, or been guilty of any misfeasance or breach of trust in relation to the Company, the Court may, on the application of the Commissioner or Liquidator of the Company, or of any creditor or contributory of the Company, examine into the conduct of such Promoter, Director, Manager, Liquidator, or other

**Compulsory
Winding Up.**

Officer of the Company, and compel him to repay any moneys or restore any property so misapplied or retained, or for which he has become liable or accountable, together with interest at such rate as the Court thinks just, or to contribute such sums of money to the assets of the Company by way of compensation in respect of such misapplication, retainer misfeasance, or breach of trust as the Court thinks just.

JERSEY

Sections relating to the Accounts and Audit of Limited Liability Companies, as taken from the Statute confirmed by Order in Council on the 5th August, 1861, and the Amending Statute confirmed by Order in Council on 3rd May, 1888.

III.—The Memorandum of Association shall be registered in pursuance of an Act of the Royal Court of this Island by the Greffier, in a book specially kept for this purpose, which shall be entitled “Register of Companies incorporated with Limited Liability.”

V.—Articles of Association for the management of the Company may be added to the Memorandum of Association, and shall be registered in pursuance of the same Act of the Court. If the Articles of Association be not registered with the Memorandum of Association, the Promoters must present them for registration, and obtain their registration within six months of the date of registration of the Memorandum of Association. If this formality is not complied with within the prescribed limit of time, the Memorandum of Association shall be void, and the Company absolutely dissolved. When the Articles of Association of a Company shall not have been registered together with and at the same time as the Memorandum of Association, they must bear the signatures of the Promoters, together with their professions or occupations and addresses, and the application for registration must be made in their names.

XIV.—Every Company incorporated under the present Law shall be bound to keep a book or register, in which the following particulars shall be entered—

Requirements
of Register of
Members.

(1) The names, ranks or professions, and residences or addresses of every and each of its members or shareholders since its foundation; and, opposite the name of each shareholder or member,

(2) The number of shares of which he is proprietor or responsible for, with the numbers of such shares;

(3) The amount paid up to the Company on each share, together with the date of each payment;

(4) The date of enrolment of his name in the said register amongst the members or shareholders of the Company;

(5) The date on which such member or shareholder ceased to be the proprietor of each of the shares entered opposite to his name.

Every Company failing or neglecting to comply with the requirements of this Article shall be liable to a penalty not exceeding two pounds a day for every day that such failure or neglect shall continue.

XV.—Every Company incorporated under the present Law shall be bound, during the month of January in each year to prepare a memorandum containing a list of the names, occupations or professions, and residences or addresses of all persons who, on the first day of January in such year, were members or shareholders in the said Company,

Annual Return
required to be
made to the
Royal Court
each year.

and opposite to the name of each member or shareholder the number of shares of which he is proprietor or responsible for, with their distinctive numbers and the amount which has been paid up to the Company on each of such shares. The said memorandum shall also give a statement of position, containing the following particulars—

(1) The amount of the capital of the Company, with the number of shares into which it is divided;

(2) The number of shares taken up since the formation

of the Company until the first of January of the year in which such list or memorandum is drawn up ;

(2) The number and the amount per share of the calls made on its members by the Company, and the total amount of capital which has been called up by such calls ;

(4) The total amount received by the Company by means of such calls ;

(5) The balance due to the Company on such calls and remaining unpaid.

And in cases where, by the Memorandum of Association, the penalty incurred by shareholders neglecting to comply with the conditions for payment of the amount of their shares is the confiscation of such shares, the said memorandum shall contain—

(6) The number of shares which have been declared as confiscated, the total amount received by the Company on such shares before confiscation, and the amount received by the Company for the sale of such shares after confiscation.

This memorandum shall be entered in a book or register kept for this purpose by the Company, and a copy of it, under the seal of the Company, shall be sent within the limits of time set forth at the commencement of this Article to the Greffier of the Royal Court, and shall remain deposited at the Greffe Office. Every Company which shall neglect or fail to prepare and register and send to the Greffier a memorandum, in conformity with this Article, shall be liable to a penalty not exceeding two pounds sterling a day for every day it continues to contravene after the 31st day of January in any year.

XVII.—Every Company incorporated under the present Law shall be bound to have a registered office in this Island, where all actions and summonses can be served and all warnings and notifications made which concern the Company, and where all notices which ought to be given to the Company can be sent or delivered by post. The Company before commencing business must send, by means of its Agents, Directors or other Officers to the Greffier of the Royal Court, a written notice under seal

Registered
Office.

indicating the situation of such office, and it shall notify the said Greffier in the same manner of every change of office which it shall subsequently make. The Greffier from the notices so sent to him shall prepare a table or list of the offices of the various Companies which shall have been incorporated under the present Law, and such table or list shall be posted up in the hall of the Royal Court. Every Company infringing the conditions of this present Article shall be liable to a penalty not exceeding two pounds sterling.

XX.—Every Company incorporated under the present Law shall be bound to hold annually in this Island a general meeting of its members and shareholders; the date for the regular holding of the said general meeting shall be fixed by the Articles of each Company.

At the said general meeting the Directors or Managers shall be bound to produce an account or statement of the receipts and expenditure of the Company, made up to the day fixed for the closing of the accounts of each year, such date also to be settled by the Articles of each Company.

The account or statement so prepared shall contain the gross amount of the receipts of the Company for the year, classified under different headings, showing the sources from which they were derived, also the gross disbursements, classified under different headings, showing the objects for which they have been incurred. If disbursements have been made during the year which are not for the exclusive needs of the current year, but of several years, they can be distributed, provided that the principles of this distribution are clearly shown, and this for the purpose of establishing the true working balance of profit and loss for the complete year.

There shall also be drawn up an inventory of the personal and real estate, and of the assets and liabilities of the Company. A Balance Sheet, containing this account or statement, must be delivered or sent by post to the shareholders ten days at least before the holding of the general meeting, and must

be formally presented by the Directors to the general meeting of the shareholders.

XXV.—When the Articles of a Company shall contain no directions respecting the subjects herein-after mentioned, the following rules shall be observed—

Rules to be
observed at
Meetings where
Articles do
not provide
for same.

(1) There shall be an ordinary general meeting each year, namely, that provided for by Article XX. This meeting shall be convened by the Directors or Managers of the Company;

(2) The general meetings, both ordinary and extraordinary, shall be called by means of a written or printed notice, stating the day, hour, and place where the meeting is to be held; it shall be signed by the persons calling the meeting, or by someone authorized by them. This notice shall be delivered or sent by post to every member of the Company at least ten days before the holding of the meeting;

(3) The general meetings of the Company, whether ordinary or extraordinary, cannot proceed or make any valid resolution on any subject or matter whatever, with the exception of the declaration of a dividend, unless there shall be members or shareholders personally present in sufficient numbers to form a quorum;

This number shall be at least—

Five, when the Company shall be composed of ten shareholders and less;

Six, when it shall be composed of more than ten and less than eighteen members or shareholders;

Of one-third, when it shall consist of eighteen members or shareholders and above up to and including sixty;

Of twenty, when the number of members or shareholders shall exceed sixty;

(4) At the holding of a general meeting, either ordinary or extraordinary, the members and shareholders present, provided they be a sufficient number to permit of the meeting proceeding to business, shall elect one of their number to be Chairman;

(5) Every member or shareholder of a Company, whatever be the number of shares held by him, shall have one vote at the ordinary and extraordinary meetings.

XXVIII.—Every Company incorporated under the present law shall be bound to keep a book or register in which there shall be regularly entered, under its date, the exact minute of the holding and resolutions and votes of every general meeting, whether ordinary or extraordinary, of its members or shareholders, and of all meetings of its Directors or Managers. These Minutes shall be signed in such book or register by the persons who shall respectively have presided over its assemblies and meetings, and, being so signed, shall be received as *primâ facie* evidence of what has been done and decided at such assemblies and meetings.

XXXIV.—It shall be lawful for the Royal Court, at the request of two or more members or shareholders of a Company, provided they represent together at least one-fifth part of the shares making up the capital of the Company, also provided that there appears to exist sufficient grounds to justify such proceedings, to name two Inspectors to make an examination and a detailed report of the affairs and position of the said Company.

XXXV.—Every Company incorporated under the present Law shall have the right, by special resolution taken at a general meeting, to nominate two Inspectors to carry out the same objects as the two Inspectors mentioned in the last Article.

XXXVI.—The Inspectors shall take oath before the Royal Court to well and faithfully carry out the duties which have been imposed upon them. They shall be entitled to hear on oath the Directors, Managers, or other Officers of the Company, and such other witnesses as they shall deem necessary relative to the affairs of the said Company; they shall have the right to inspect the account books, and other books, registers, deeds, and documents belonging to the Company. The Directors or Managers and other Officers shall be bound to produce to the said Inspectors all books, registers, deeds, and documents in

their care or under their control appertaining to the Company, and to give them all the information in their power for the purpose of facilitating the examination with which they are charged. Every Director, Manager, or other Officer of the Company who shall refuse to answer a question relative to the subjects comprised in such examination, or to produce the books, registers, deeds, or documents which they are bound to produce by the present Article shall be liable to a penalty of two pounds sterling at least, or ten pounds sterling at most, for each offence.

XXXVII.—The Inspectors shall draw up a detailed report of their examination. If they have been appointed by the Court, they shall present to the Court a copy of such report, under their signatures, which shall remain lodged with the Greffe. When the Inspectors shall have been named by the general meeting of a Company, they shall send a copy of their report, under their signatures, to the person or persons whom the assembly shall have designated for this purpose. Every report of Inspectors, duly authenticated by their signatures, shall be received in every law suit as legal proof of the opinion of the Inspectors with respect to the facts mentioned in such report, without need to hear the said Inspectors themselves as witnesses in support of the said report.

XLI.—The Directors or Managers of a Company incorporated under the present law shall be bound to keep the necessary books for the affairs of the Company :
Books to be kept. a Day Book, a Ledger kept in double entry, and a Cash Book ; and they shall regularly, day by day, write therein all the transactions of the Company. They shall also keep a book wherein shall be regularly copied, in order of date, an exact copy of every letter sent out by the Company.

XLII.—It shall not be lawful at any time to use the capital of a Company for the payment of dividends.
Capital not to be used for Payment of Dividends. No dividends shall in any case be declared or paid except out of the profits and earnings resulting from the business or undertakings of the Company.

The Directors or Managers who wittingly or willingly shall misrepresent to the general meeting the true position of the Company, in such a manner as to induce the shareholders to declare a higher dividend than the true position of the Company justifies, or which shall affect the capital, shall be responsible for the debts of the Company and the consequences resulting from their acts.

XLIV.—The conditions of the present law shall not apply to Banking and Insurance Companies.

THE COMPANIES CLAUSES CONSOLIDATION ACT, 1845
(8 Vict., c. 16.)

[8th May, 1845.]

1. This Act shall apply to every Joint Stock Company which shall by any Act which shall hereinafter be passed be incorporated for the purpose of carrying on any undertaking, and this Act shall be incorporated with such Act; and all the clauses and provisions of this Act, save so far as they shall be expressly varied or excepted by any such Act, shall apply to the Company which shall be incorporated by such Act, and to the undertaking for carrying on which such Company shall be incorporated, so far as the same shall be applicable thereto respectively; and such clauses and provisions, as well as the clauses and provisions of every other Act which shall be incorporated with such Act, shall, save as aforesaid, form part of such Act, and be construed together therewith as forming one Act.

2. The expression "the Special Act" used in this Act shall be construed to mean any Act which shall be hereafter passed incorporating a Joint Stock Company for the purpose of carrying on any undertaking, and with which this Act shall be so incorporated as aforesaid.

6. The Capital of the Company shall be divided into shares

of the prescribed number and amount ; and such shares shall be numbered in arithmetical progression, beginning with number one ; and every such share shall be distinguished by its appropriate number.

Capital to be
divided into
Shares.

This section does not prevent the Company from reducing the amount of the shares.—*Ambergate Railway Company v. Mitchell*, 6 R.C. 235.

The provision with regard to the numbering of the shares is directory only.—*Portal v. Emmens*, 1 C.P.D. 201, 664.

9. The Company shall keep a book to be called the “ Register of Shareholders ” ; and in such book shall be fairly and distinctly entered, from time to time, the names of the several Corporations, and the names and additions of several persons entitled to shares in the Company, together with the number of shares to which such shareholders shall be respectively entitled, distinguishing each share by its number, and the amount of the subscriptions paid on such shares, and the surnames or corporate names of the said shareholders shall be placed in alphabetical order ; and such book shall be authenticated by the common seal of the Company being affixed thereto ; and such authentication shall take place at the first ordinary meeting, or at the next subsequent meeting of the Company, and so from time to time at each ordinary meeting of the Company.

Register of
Shareholders.

For the purpose of paying debts, entry upon the Register, or even the existence of a Register, is not material.—*Portal v. Emmens*, 1 C.P.D. 201, 664.

The section is merely directory, but it must be substantially complied with in order to make the Register evidence of a Defendant in an action for calls being a Shareholder.—*East Gloucestershire Railway Co. v. Bartholomew*, L.R., 3 Ex. 15.

10. In addition to the said Register of Shareholders, the Company shall provide a book, to be called the “ Shareholders’ Address Book,” in which the Secretary shall from time to time enter in alphabetical order the corporate names and places of business of the several shareholders of the Company, being

Addresses of
Shareholders.

Corporations, and the surnames of the several other shareholders, with their respective Christian names, places of abode, and descriptions, so far as the same shall be known to the Company; and every shareholder, or if such shareholder be a Corporation the clerk or agent of such Corporation, may at all convenient times peruse such book gratis, and may require a copy thereof or of any part thereof; and for every hundred words so required to be copied the Company may demand a sum not exceeding sixpence.

The right given to a shareholder by this section to require the Company to supply him with a copy is a private right conferred on him by statute by reason of his being a member of the Company, and not as being a member of the public.—*Davies v. Gas Light and Coke Co.* [1909], 1 Ch. 708.

38. If the Company be authorized by the special Act to borrow money on mortgage or bond, it shall be lawful for them, subject to the restrictions contained in the special Act, to borrow on mortgage or bond such sums of money as shall from time to time, by an order of a general meeting of the Company, be authorized to be borrowed, not exceeding in the whole the sum prescribed by the special Act, and for securing the repayment of the money so borrowed, with interest, to mortgage the undertaking, and the future calls on the shareholders, or to give bonds in manner hereinafter mentioned.

Power to
Borrow
Money.

A Company incorporated by Statute can borrow money only within the limits and in the manner authorized by Statute.

Where, therefore, there is no power to borrow, it is *ultra vires* to overdraw the banking account, this being in effect borrowing.—*Blackburn Building Society v. Cunliffe Brooks & Co.*, 22 Ch. D. 61.

Such a Company cannot, therefore, without express powers, issue bills of exchange.—*Bateman v. Mid-Wales Railway Co.*, L.R. 1 C.P. 499.

It can, however, incur debts in the ordinary course of its business.

39. If, after having borrowed any part of the money so

authorized to be borrowed on mortgage or bond, the Company pay off the same, it shall be lawful for them again to borrow the amount so paid off, and so from time to time; but such power of re-borrowing shall not be exercised without the authority of a general meeting of the Company, unless the money be so re-borrowed in order to pay off any existing mortgage or bond.

45. A Register of Mortgages and Bonds shall be kept by the Secretary, and within fourteen days after the date of any such mortgage or bond an entry or memorial, specifying the number and date of such mortgage or bond and the sums secured thereby, and the names of the parties thereto, with their proper additions, shall be made in such Register; and such Register may be perused at all reasonable times by any of the shareholders, or by any mortgagee or bond creditor of the Company, or by any person interested in any such mortgage or bond, without fee or reward.

The right of perusal may be exercised without assigning any reason, and may be enforced by injunction.—*Holland v. Dickson*, 37 Ch. D. 669. The right includes a right to take copies.—*Mutter v. Eastern and Midlands Railway Co.*, 38 Ch. D. 92.

Persons entitled to inspect the Register under this section would appear to be entitled to inspection by their Solicitor.—*See In re Credit Co.*, 11 Ch. D. 256.

48. The interest of the money borrowed upon any such mortgage or bond shall be paid at the periods appointed in such mortgage or bond, and if no period be appointed half-yearly, to the several parties entitled thereto, and in preference to any dividends payable to the shareholders of the Company.

If the debt be not repaid on the day appointed, the mortgage or bond will continue to carry interest, although not so expressed in the deed.—*Price v. Great Western Railway Co.*, 16 M. & W. 244.

55. At all reasonable times the Books of Account of the

Company shall be open to the inspection of the respective mortgagees and bond creditors thereof, with liberty to take extracts therefrom without fee or reward.

56. It shall be lawful for the Company, if they think fit, unless it be otherwise provided by the special Act, to raise the additional sum so authorized to be borrowed, or any part thereof, by creating new shares of the Company, instead of borrowing the same, or, having borrowed the same, to continue at interest only a part of such additional sum, and to raise part thereof by creating new shares; but no such augmentation of capital as aforesaid shall take place without the previous authority of a general meeting of the Company.

57. The capital so to be raised by the creation of new shares shall be considered as part of the general capital, and shall be subject to the same provisions in all respects, whether with reference to the payment of calls, or the forfeiture of shares on non-payment of calls, or otherwise, as if it had been part of the original capital, except as to the times of making calls for such additional capital, and the amount of such calls, which respectively it shall be lawful for the Company from time to time to fix as they shall think fit.

61. It shall be lawful for the Company from time to time, with the consent of three-fifths of the votes of the shareholders present in person or by proxy at any general meeting of the Company, when due notice for that purpose shall have been given, to convert or consolidate all or any part of the shares then existing in the capital of the Company, and in respect whereof the whole money subscribed shall have been paid up, into a General Capital Stock, to be divided amongst the shareholders according to their respective interests therein.

63. The Company shall from time to time cause the names

of the several parties who may be interested in any such stock as aforesaid, with the amount of the interest therein possessed by them respectively, to be entered in a book to be kept for the purpose, and to be called "The Register of Holders of Consolidated Stock."

65. And be it enacted, that all the money raised by the Company, whether by subscriptions of the shareholders, or by loan or otherwise, shall be applied, firstly, in paying the costs and expenses incurred in obtaining the special Act, and all expenses incident thereto, and, secondly, in carrying the purposes of the Company into execution.

66. The first general meeting of the shareholders of the Company shall be held within the prescribed time, or, if no time be prescribed, within one month after the passing of the special Act, and the future general meetings shall be held at the prescribed periods, and, if no periods be prescribed, in the months of February and August in each year, or at such other stated periods as shall be appointed for that purpose by an order of a general meeting; and the meetings so appointed to be held as aforesaid shall be called "Ordinary Meetings," and all meetings, whether ordinary or extraordinary, shall be held in the prescribed place, if any, and, if no place be prescribed, then at some place to be appointed by the Directors.

67. No matters, except such as are appointed by this or the special Act to be done at an ordinary meeting, shall be transacted at any such meeting, unless special notice of such matters have been given in the advertisement convening such meeting.

It is at these Half-yearly Ordinary Meetings that the Accounts are produced to the Shareholders (*see* Sections 116, 118) and Dividends declared.

At the first Ordinary Meeting in each year one of the Auditors retires and is re-elected, or a new Auditor appointed in his place (*see* Sections 101, 103).

If any vacancy takes place among the Auditors in the course of the year, then the Shareholders may fill the vacancy at any General Meeting (*see* Section 104).

Special notice of intention to vote remuneration to Directors must be given.—*Hutton v. West Cork Railway Co.*, 23 Ch. D. 654.

91. Except as otherwise provided by the special Act, the following powers of the Company (that is to say) the choice and removal of the Directors, except as hereinbefore mentioned, and the increasing or reducing of their number where authorized by the special Act, the choice of Auditors, the determination as to the remuneration of the Directors, Auditors, Treasurer, and Secretary, the determination as to the amount of money to be borrowed on mortgage, the determination as to the augmentation of capital, and the declaration of dividends, shall be exercised only at a general meeting of the Company.

Powers of the Company to be exercised only at a General Meeting.

98. The Directors shall cause notes, minutes, or copies, as the case may require, of all appointments made or contracts entered into by the Directors, and of the orders and proceedings of all meetings of the Company and of the Directors and Committees of Directors, to be duly entered in books, to be from time to time provided for the purpose, which shall be kept under the superintendence of the Directors, and every such entry shall be signed by the Chairman of such meeting.

Proceedings to be entered in a Book and to be Evidence.

101. Except where, by the special Act, Auditors shall be directed to be appointed otherwise than by the Company, the Company shall, at the first ordinary meeting after the passing of the special Act, elect the prescribed number of Auditors, and if no number is prescribed two Auditors, in like manner as is provided for the election of Directors; and at the first ordinary meeting of the Company in each year thereafter the Company shall in a like manner elect an Auditor to supply the place of the Auditor then retiring from office, according to the

Election of Auditors.

provision hereinafter contained ; and every Auditor elected as hereinbefore provided, being neither removed nor disqualified nor having resigned, shall continue to be an Auditor until another be elected in his stead.

102. Where no other qualification shall be prescribed by the special Act, every Auditor shall have at least one share in the undertaking ; and he shall not hold any office in the Company, nor be in any other manner interested in its concerns, except as a shareholder.

Qualification
of Auditors.

This Section is amended as to Railways by the Regulation of Railways Act, 1868 (31 & 32 Vict., c. 119), Sections 11 and 12, and an Auditor appointed under that Act need not be a Shareholder.

103. One of such Auditors (to be determined in the first instance by ballot between themselves, unless they shall otherwise agree, and afterwards by seniority) shall go out of office at the first ordinary meeting in each year ; but the Auditor so going out shall be immediately re-eligible, and after any such re-election shall, with respect to the going out of office by rotation, be deemed a new Auditor.

Rotation of
Auditors.

104. If any vacancy take place among the Auditors in the course of the current year, then at any general meeting of the Company the vacancy may, if the Company think fit, be supplied by election of the shareholders.

Vacancies in
Office of
Auditor.

105. The provision of this Act respecting the failure of an ordinary meeting at which Directors ought to be chosen shall apply, *mutatis mutandis*, to any ordinary meeting at which an Auditor ought to be appointed.

Failure of
Meeting to
elect Auditor.

If the prescribed quorum of shareholders be not present within an hour, no election of Auditors can be made, and the meeting stands adjourned to the following day at the same time and place, when, if the prescribed quorum be not present within an hour, the existing Auditors will continue to act until the First Ordinary Meeting of the following year.

106. The Directors shall deliver to such Auditors the half-yearly or other periodical Accounts and Balance Sheet fourteen days at the least before the ensuing ordinary meeting at which the same are required to be produced to the shareholders as hereinafter provided.

Delivery of Balance Sheet, etc., by Directors to Auditors.

The Forms of Accounts and Balance Sheet prescribed by the Gasworks Clauses Act (1847) Amendment, and by the Regulation of Railways Act, 1868, will be found in the Appendix.

107. It shall be the duty of such Auditors to receive from the Directors the half-yearly or other periodical Accounts and Balance Sheet required to be presented to the shareholders, and to examine the same.

Duty of Auditors.

108. It shall be lawful for the Auditors to employ such Accountants and other persons as they may think proper, at the expense of the Company, and they shall either make a special report on the said Accounts, or simply confirm the same; and such report or confirmation shall be read, together with the report of the Directors, at the ordinary meeting.

Powers of Auditors.

The power given by this Section is conferred on each Auditor.—*Steele v. Sutton Gas Co.*, 12 Q.B.D. 68; see Chapter XIV.

And with respect to the keeping of Accounts, and the right of inspection thereof by the shareholders, be it enacted as follows:

115. The Directors shall cause full and true Accounts to be kept of all sums of money received or expended on account of the Company by the Directors and all persons employed by or under them, and of the matters and things for which such sums of money shall have been received or disbursed and paid.

Accounts to be kept.

The common order for inspection includes the Plaintiff, his Solicitor, and Agents, which appears to be limited to a general Agent.—*Draper v. Manchester, Sheffield & Lincolnshire Railway Co.*, 3 D.F. & J. 23; 9 W.R. 215.

Inspection by witnesses will only be allowed if a special case is made out.

A professional Accountant, or a person familiar with accounts, will be allowed to inspect, if the action involves complicated accounts, but not otherwise.—*Swansea Vale Railway Co. v. Budd*, 2 Eq. 274 ; *Lindsay v. Gladstone*, 9 Eq. 132.

A professional Accountant will not be allowed to inspect the books of a Company if he be also the Auditor of a rival Company.—*Draper v. Manchester, Sheffield & Lincolnshire Railway Co.*, 3 D.F. & J. 23 ; 9 W.R. 215.

116. The books of the Company shall be balanced at the prescribed periods, and, if no periods be prescribed, fourteen days at least before each ordinary meeting ;
Books to be
Balanced.
 and, forthwith on the books being so balanced, an exact Balance Sheet shall be made up, which shall exhibit a true Statement of the Capital Stock, Credits, and Property of every description belonging to the Company, and the debts due by the Company at the date of making such Balance Sheet, and a distinct view of the Profit or Loss which shall have arisen on the transactions of the Company in the course of the preceding half-year ; and previously to each ordinary meeting such Balance Sheet shall be examined by the Directors, or any of their number, and shall be signed by the Chairman or Deputy-Chairman of the Directors.

As by Section 106 the Directors have to deliver to the Auditors the Balance Sheet and Accounts fourteen days at the least before the Ordinary Meeting, it follows that, should the Directors only balance the books on the last day allowed by Section 116, they must be delivered to the Auditors the same day.

117. The books so balanced, together with such Balance Sheet as aforesaid, shall for the prescribed periods, and if no periods be prescribed for fourteen days previous to each ordinary meeting, and for one month thereafter, be open for the inspection of the shareholders at the principal office or place of business of the Company ; but the shareholders shall not be entitled at any time, except during the periods aforesaid, to demand the inspection of such books, unless in virtue of a written order signed by three of the Directors.

Inspection of
Accounts by
Shareholders
at stated times.

118. The Directors shall produce to the shareholders assembled at such ordinary meeting the said Balance Sheet, applicable to the period immediately preceding such meeting, together with the report of the Auditors thereon, as hereinbefore provided.

119. The Directors shall appoint a book-keeper to enter the Accounts aforesaid in books to be provided for the purpose ; and every such book-keeper shall permit any shareholder to inspect such books, and to take copies or extracts therefrom, at any reasonable time during the prescribed periods, and if no periods be prescribed during one fortnight before and one month after every ordinary meeting.

120. Previously to every ordinary meeting at which a dividend is intended to be declared the Directors shall cause a scheme to be prepared, showing the profits, if any, of the Company for the period current since the preceding ordinary meeting at which a dividend was declared, and apportioning the same, or so much thereof as they may consider applicable to the purposes of dividend, among the shareholders, according to the shares held by them respectively, the amount paid thereon, and the periods during which the same may have been paid, and shall exhibit such scheme at such ordinary meeting, and at such meeting a dividend may be declared according to such scheme.

For general remarks as to Profits available for Dividend *see* Chapter XIV.

Money borrowed for the purpose of completing a railway line is not payable out of profits, but debts incurred for rails, stations, and the like are payable out of profits.—*Coe v. London and Enniskillen Railway Co.*, 27 B. 263.

Dividends may not be paid out of borrowed capital, nor can interest on Debentures be charged to Capital Account.—*Bloxam v. Metropolitan Railway Co.*, 3 Ch. 337.

121. The Company shall not make any dividend whereby

their Capital Stock will be in any degree reduced: Provided always that the word "Dividend" shall not be construed to apply to a return of any portion of the Capital Stock, with the consent of all the Mortgagees and Bond Creditors of the Company, due notice being given for that purpose at an extraordinary meeting to be convened for that object.

Dividend not
to be made so
as to reduce
Capital.

Compare Companies (Consolidation) Act, 1908, Schedule I (Table A), Art. (97): "No dividend shall be paid otherwise than out of profits."

122. Before apportioning the profits to be divided among the shareholders the Directors may, if they think fit, set aside thereout such sum as they may think proper to meet contingencies, or for enlarging, repairing, or improving the works connected with the Undertaking, or any part thereof, and may divide the balance only among the shareholders.

Power of
Directors to
set apart a
Fund for
Contingencies.

123. No dividends shall be paid in respect of any share until all calls then due in respect of that and every other share held by the person to whom such dividend may be payable shall have been paid.

Dividend not
to be paid
unless all
Calls paid.

THE COMPANIES CLAUSES ACT, 1863 (26 & 27 Vict., c. 118.)

[28th July, 1863.]

4. Where any share of the capital of the Company is, after the passing of this Act, declared forfeited under and in pursuance of the provisions with respect to the forfeiture of shares for non-payment of calls contained in the Companies Clauses Consolidation Act, 1845, and the Companies Clauses Consolidation (Scotland) Act, 1845, respectively, and the forfeiture is confirmed by a meeting in accordance with the same provisions respectively, and notice of the forfeiture has been given, then and in every such case, if the Directors of

Power to
Company to
cancel for-
feited Shares.

the Company are unable to sell the share for a sum equal to the arrears of calls and interest and expenses due in respect thereof, the Company at any general meeting held not less than two months after such notice is given may, in case payment of the arrears of calls, interest, and expenses due in respect thereof is not made by the registered holder of the share before the meeting is held, resolve that the share instead of being sold shall be cancelled, and the share shall thereupon be cancelled accordingly.

6. Where it is so resolved that any share shall be cancelled, the holder thereof shall from and after the passing of the resolution be precluded from all right and interest therein and in respect thereof; but the cancellation shall not affect the liability of the last registered holder of the share to pay to the Company all arrears of calls, interest, and expenses due in respect of the share at the time of the cancellation, or the power of the Company to enforce payment thereof by action or otherwise.

7. Provided always, that if the Company enforces the payment of the arrears of calls, interest, and expenses under the last preceding provision, the value of the share at the time of the cancellation thereof shall be deducted from the amount so then due; provided also, that if payment of all arrears of calls, interest, and expenses is made before such meeting as aforesaid is held, the share shall revert to the person to whom it belonged at the time of forfeiture, and shall be re-entered on the Company's Register accordingly.

8. Where any share is declared forfeited, or where any sum payable on any share remains unpaid, the Company, with the consent in writing of the registered holder of the share, and with the sanction of a general meeting, may resolve that the share shall be cancelled, and immediately thereupon the share shall be cancelled, and all liabilities and rights with respect to the share shall thereupon be absolutely extinguished.

Payment of
Calls in arrear
notwithstanding
cancellation.

Value of for-
feited Shares
to be
deducted from
amount due
in respect
thereof.

Company
may cancel
forfeited Shares
with consent
of holders.

9. The Company may from time to time accept, on such terms as they think fit, surrenders of any shares which have not been fully paid up.

As to Surrender
of Shares.

No Money to
be paid for
Cancellation
or Surrender.

10. The Company shall not pay or refund to any shareholder any sum of money for or in respect of the cancellation or surrender of any share.

11. The Company may from time to time, in lieu of any shares that have been cancelled or surrendered, issue new shares of such amounts as will allow the same to be conveniently apportioned or disposed of according to the resolution of any ordinary or extraordinary meeting of the Company, and may from time to time fix the amounts and times of payment of the calls on any such new shares, and dispose thereof on such terms and conditions as may be so resolved upon: Provided that the aggregate nominal amount of the new shares shall not exceed the aggregate nominal amount of the shares in lieu of which the new shares are issued, after deducting the amount actually paid up in respect of the shares cancelled or surrendered.

Power to
create Shares
in lieu of
cancelled,
forfeited, etc.,
Shares.

12. Where any Company, incorporated either before or after the passing of this Act for the purpose of carrying on any undertaking, is authorized by any special Act hereafter passed and incorporating this part of this Act, to raise any additional sum or sums by the issue of new ordinary shares, or by the issue of new ordinary stock, or (at the option of the Company) by either of those modes, then and in every such case the Company, with the sanction of such proportion of the votes of the shareholders and stockholders entitled to vote in that behalf at meetings of the Company, present (personally or by proxy) at a meeting of the Company specially convened for the purpose, as is prescribed in the special Act, and if no proportion is prescribed then of three-fifths of such votes, may, for the purpose of raising the

Regulations
as to creation
and issue of
Ordinary
Shares or new
Ordinary Stock.

additional sum or sums, from time to time create and issue (according as the authority given by the special Act extends to shares only, or to stock only, or to both) such new ordinary shares, of such nominal amount, and subject to the payment of calls of such amounts and at such times as the Company thinks fit, or such new ordinary stock as the Company thinks fit.

13. Where any such Company is authorized by any special Act hereafter passed and incorporating this part of this Act to raise any additional sum or sums by the issue of new preference shares, or by the issue of new preference stock, or (at the option of the Company) by either of those modes, then and in every such case the Company, with the like sanction as aforesaid, may for the purpose of raising such additional sum or sums from time to time create and issue (according as the authority given by the special Act extends to shares only or to stock only, or both) such new shares or new stock, either ordinary or preference, and either of one class and with like privileges, or of several classes and with different privileges, and of the same or different amounts, and respectively with any fixed, fluctuating, contingent, preferential, perpetual, terminable, deferred, or other dividend or interest, not exceeding the rate prescribed in the special Act; and if no rate is prescribed, then not exceeding the rate of five pounds per centum per annum, and subject (as to any such new shares) to the payment of calls of such amounts and at such times as the Company from time to time thinks fit.

Provided always that any preference assigned to any shares or stock so issued under the special Act shall not affect any guarantee or any preference or priority in the payment of dividend or interest on any shares or stock, that may have been granted by the Company under or confirmed by any previous Act, or that may be otherwise lawfully subsisting.

14. The preference shares or preference stock shall be

entitled to the preferential dividend, or interest assigned thereto, out of the profits of each year, in priority to the ordinary shares and ordinary stock of the Company; but if in any year ending on the day prescribed in the special Act, and if no day is prescribed, then on the thirty-first day of *December*, there are not profits available for the payment of the full amount of preferential dividend or interest for that year, no part of the deficiency shall be made good out of the profits of any subsequent year, or out of any other funds of the Company.

Preference
Shares to be
entitled to
Dividends
only out of
the Profits of
each Year.

In cases not within these sections it has been held that preference shareholders are entitled to have arrears of interest made up out of the profits of subsequent years.—*Henry v. Great Northern Railway Co.*, 1 De G. & J. 606; *Corry v. Londonderry, etc., Railway Co.*, 29 B. 263; *Matthews v. Great Northern Railway Co.*, 28 L.J. Ch. 375.

Preference shareholders who have allowed the surplus profits of one year to be applied in payment of ordinary shareholders, instead of in payment of arrears due to them, are not prevented from claiming such arrears against the profits of future years.—*Matthews v. Great Northern Railway Co.*, 28 L.J. Ch. 375.

22. Where any Company incorporated either before or after the passing of this Act for the purpose of carrying on any undertaking is authorized by any special Act hereafter passed, and incorporating this part of this Act, to create and issue debenture stock, then and in every such case the Company with the sanction of such proportion of the votes of the shareholders and stockholders entitled to vote in that behalf at meetings of the Company, present (personally or by proxy) at a meeting of the Company specially convened for the purpose, as is prescribed in the special Act, and if no proportion is prescribed then of three-fifths of such votes, may from time to time raise all or any part of the money which for the time being they have raised, or are authorized to raise, on mortgage or bond, by the creation and issue, at such times, in such amounts and manner, on such terms, subject to such conditions, and with such rights and privileges as the Company think fit, of stock to be called debenture

Regulations
as to creation
and issue of
Debenture
Stock.

stock, instead of and to the same amount as the whole or any part of the money which may for the time being be owing by the Company on mortgage or bond, or which they may from time to time have power to raise on mortgage or bond, and may attach to the stock so created such fixed and per-

petual preferential interest¹ [not exceeding the rate prescribed in the special Act, and if no rate is prescribed then not exceeding the rate of four pounds per centum per annum], payable half-yearly or otherwise, and commencing at once or any other future time or times, when and as the debenture stock is issued, or otherwise, as the Company thinks fit.

For 30 & 31 Vict., c. 127, s. 24 (the Railway Companies Act, 1867), *see post*.

23. Debenture stock, with the interest thereon, shall be a charge upon the undertaking of the Company prior to all shares or stock of the Company, and shall be transmissible and transferable in the same manner and according to the same regulations and provisions as other stock of the Company.

Debenture
Stock to be a
prior charge.

See the Railway Companies Act, 1867, Sec. 23.

24. The interest on debenture stock shall have priority of payment over all dividends or interest on any shares or stock of the Company, whether ordinary or preference or guaranteed, and shall rank next to the interest payable on the mortgages or bonds for the time being of the Company legally granted before the creation of such stock; but the holders of debenture stock shall not, as among themselves, be entitled to any preference or priority.

Interest on
Debenture
Stock to be
primary Charge.

See In re Burry Port, etc., Railway Co., 33 W.R. 741; 54 L.J. Ch. 710.

28. The Company shall cause entries of the debenture stock from time to time created to be made in a Register to be kept for that purpose, wherein they shall enter the names and addresses of the several persons and corporations from time to time entitled to the debenture stock, with the respective amounts of the stock to which they are respectively entitled.

Debenture
Stock to be
registered.

32. Money raised by debenture stock shall be applied exclusively either in paying off money due by the Company on mortgage or bond, or else for the purpose to which the same money would be applicable if it were raised on mortgage or bond instead of on debenture stock.

Application of
Money raised.

33. Separate and distinct Accounts shall be kept by the Company, showing how much money has been received for or on account of debenture stock, and how much money borrowed or owing on mortgage or bond, or which they have power so to borrow, has been paid off by debenture stock, or raised thereby, instead of being borrowed on mortgage or bond.

Separate
Accounts of
Debenture
Stock.

34. The powers of borrowing and re-borrowing by the Company shall, to the extent of the money raised by the issue of debenture stock, be extinguished.

Borrowing
Powers
extinguished
to extent of
Debenture Stock.

35. The provisions of this part of the Act shall be deemed to apply to mortgage preference stock, and to funded debt, as the case may require, in all respects as if mortgage preference stock or funded debt were mentioned throughout this part of this Act wherever debenture stock is mentioned therein.

Application of
Sections 22 to 34
to Mortgage
Preference
Stock and
Funded Debt.

THE COMPANIES CLAUSES ACT, 1869
(32 & 33 Vict., c. 48.)

[2nd August, 1869.]

Whereas the Companies Clauses Act, 1863, has been amended in certain respects as regards Railway Companies, and it is expedient that such amendments should extend to other Companies :

Be it therefore enacted as follows :

1 Part III [Sections twenty-two to thirty-five] of the

Companies Clauses Act, 1863, shall be read and have effect as if the following words, that is to say, "not exceeding the rate prescribed in the special Act, and if no rate is prescribed, then not exceeding the rate of four pounds per centum per annum," had not been inserted in Section twenty-two of that Act, and any special Act of a Company passed before the passing of this Act, prescribing any rate, shall be read and have effect as if no rate had been prescribed therein.

2. Provided, that any debenture stock, the creation whereof has been authorized by a Company, but which has not been issued before the passing of this Act, shall not be issued on any terms other than those whereon it might have been issued if this Act had not been passed, unless and until the issue thereof, on terms other than as aforesaid, is after the passing of this Act authorized by the Company in manner provided in Section twenty-two of the Companies Clauses Act, 1863.

3. Any Company having power to raise money on mortgage or bond by virtue of any Act of Parliament, but not having power to create and issue debenture stock, may create and issue debenture stock subject to the provisions of Part III of the Companies Clauses Act, 1863 (relating to debenture stock), and Part III of the said Act, as amended by this Act, shall be deemed to be incorporated with the special Act of every such Company.

4. Money borrowed by a Company for the purpose of paying off and duly applied in paying off bonds or mortgages of the Company given or made under the statutory powers of the Company shall so far as the same is so applied, be deemed money borrowed within and not in excess of such statutory powers.

5. Section twenty-one of the Companies Clauses Act, 1863, shall, with respect to any Company to which it is applicable under the provisions of this or any other Act, be read and have effect as if the following words, that is to say, "but so that not less than the

Amendment of
Part III of
26 & 27 Vict.,
c. 118, as to
rate of interest
on Debenture
Stock.

Restriction on
rate of interest
on Debenture
Stock already
authorised.

Power to issue
Debenture Stock,
subject to
Part III of
26 & 27 Vict.,
c. 118.

Advances to
meet Deben-
tures falling
due.

Power to
issue Shares
or Stock at
discount.

full nominal amount of any share or portion of stock be payable or paid in respect thereof," had not been inserted in that section.

A Company governed by the Companies Clauses Consolidation Act, 1845, and the Acts amending it, may issue fully paid-up Original Stock at a discount, and for payment either in cash, or for land or labour or other consideration, subject to the liability of the Directors for issuing the Stock below its value without necessity.—*Webb v. Shropshire Railways Co.* [1893], 3 Ch. 307.

A Company governed by the same Acts may issue fully paid-up Original Shares at a sum less than their nominal amount, in the same manner as new shares can, under the authority of those Acts, be issued.—*Statham v. Brighton Marine Palace and Pier Co.* [1899], 1 Ch. 199.

6. Any shares forming part of the capital (whether original or additional) authorized to be raised by any special Act of a Company passed before the present session which have not been disposed of may be disposed of in manner provided by Part II of the Companies Clauses Act, 1863, as amended by this Act, and that part, as so amended, shall be deemed incorporated with such special Act accordingly.

Power to
issue residue
of original or
other Capital
at discount.

7. Provided that any shares, the creation whereof has been authorized by a Company, but which have not been issued before the passing of this Act, shall not be issued on any terms other than those whereon the same might have been issued if this Act had not been passed unless and until the issue thereof on terms other than as aforesaid is after the passing of this Act authorized by the Company in manner provided by Part II of the Companies Clauses Act, 1863.

Restriction
on issuing at
discount
Shares or
Stock already
authorized.

8. Provided always, that this Act shall not be construed to alter or extend the provisions of any Act relating to share capital in respect of which the amount of profits to be divided is limited to a fixed rate per centum upon the paid-up capital of the Company.

Act not to
affect provisions
as to Capital
upon which
the Dividend
is limited.

THE STATUTORY COMPANIES (REDEEMABLE STOCK) ACT, 1915

(5 & 6 George V, c. 44.)

[19th May, 1915.]

1.—(1) Where a statutory Company as defined by this Act are authorized to raise any preference or debenture stock, they may create and issue that stock so as to be redeemable on such terms and conditions as may be specified in a resolution of the Company passed at a special meeting convened for the purpose.

Issue of
Redeemable
Preference or
Debenture Stock,

(2) If it is so provided in the resolution the statutory Company may—

(a) call in and pay off the stock or any part thereof at any time before the fixed date of redemption ; and

(b) redeem the stock or any part thereof, either by paying off the stock or by issuing to any stockholder, subject to his consent, other stock in substitution therefor ; and may, for the purposes of providing money for paying off the stock or of providing substituted stock, create and issue new stock (either redeemable or irredeemable) or reissue stock originally created and issued under this section, provided that the creation and issue for the purpose of any particular class of stock does not make the total nominal amount of that stock issued exceed the amount of that class of stock which the company are for the time being authorized to create.

(3) The Company may set aside out of revenue, after providing for the payment of interest on any loan, or on any guaranteed, preference, or debenture stock of the Company and for other fixed charges and obligations, such sums as they may consider proper for the purpose of forming a fund for the redemption at maturity of any redeemable preference or debenture stock which, under the conditions of the creation and issue of that stock, is to be redeemed wholly or partly in cash ; and the Company may invest any sums so set apart, and the income therefrom, in any securities in which trustees are for the time being by law authorized to invest trust funds,

or in any other securities (not being securities of the Company except as hereinafter provided) in which they may be authorized to invest those sums by a resolution passed at a general meeting of the Company.

Any sums so set apart shall be applied for the redemption at maturity of any redeemable preference or debenture stock for the redemption of which they have been set apart, but may, if the directors of the Company think fit, be also at any time applied in the purchase of any such stock at a price not exceeding the redemption price, and any stock so purchased shall be cancelled.

(4) A resolution of a statutory Company, passed before the commencement of this Act and after the outbreak of the war, for the creation or issue of redeemable stock shall, for the purposes of this Act, have the same effect as if this Act had been in operation at the time when the resolution was passed.

(5) This Act shall apply only to stock authorized to be created or to be issued before the outbreak of the present war, or after the outbreak of the present war, and before the commencement of this Act; and redeemable stock shall not be created or issued, in pursuance of the powers given by this Act, during the continuance of the present war and a period of twelve months thereafter except with the consent of the Treasury.

2.—(1) In this Act, unless the context otherwise requires—

<p>Interpretation and Construction.</p>	<p>The expression “ statutory company ” means any, railway company, canal company, dock company, water company, or other Company incorporated by special Act, who are for the time being authorized under such an Act to construct, work, own, or carry on any railway, canal, dock, water, or other public undertaking, and includes any person or body of persons so authorized.</p>
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The expression “ special Act ” includes any certificate or order having the force of an Act.

(2) The provisions of this Act shall apply to preference shares in the same manner as they apply to preference stock,

and to debentures in the same manner as they apply to debenture stock.

(3) The powers given by this Act shall be deemed to be in addition to, and not in derogation of, any other powers under any other Act ; and those powers may be exercised in the same manner as if this Act had not passed.

THE PUBLIC UTILITY COMPANIES (CAPITAL ISSUES) ACT
1920

(10 & 11 George V., c. 9.)

[20th May, 1920.]

1.—(1) Where a Company are authorized by special Act to raise capital by the issue of stock or the borrowing of money for the purpose of carrying on any undertaking to which this Act applies, or where the Powers under provisions of special Acts and Orders as to capital issues. powers of a Company to raise capital or borrow money for the purpose of carrying on such an undertaking are limited by the special Act, the Company may, if they think fit, notwithstanding anything in the special Act, with the consent of the appropriate Government department, which consent may be given subject to such terms and conditions as appear to the department to be expedient—

(a) offer for subscription by the public any such stock and at a fixed price lower than the nominal amount of the stock, and all allotments in respect of such stock shall be made as nearly as possible pro rata :

Provided that, if in any case, where the amount of money to be raised does not exceed twenty thousand pounds, it is proved to the satisfaction of the appropriate department that the observance of any of the limitations so imposed on the offering for subscription or allotment of stock would prejudice the success of the issue or the realization of the best price obtainable, the department may dispense with such limitations ;

(b) where the special Act authorizes the creation and issue of ordinary stock, create and issue redeemable or irredeemable preference stock in lieu thereof ;

(c) where the special Act authorizes the creation and issue of irredeemable preference or debenture stock, create and issue redeemable preference or debenture stock ;

(d) where the special Act authorizes the creation and issue of debenture stock or the borrowing of money to a limited extent, create and issue debenture stock or borrow money to an extent not exceeding half the share capital for the time being issued and paid up ;

(e) pay a higher rate of dividend or interest on preference stock or debenture stock or money borrowed than that authorized by the special Act :

(2) The undertakings to which this Act applies are undertakings for the supply of gas, water, hydraulic power, and electricity, and tramway undertakings, including light railways constructed wholly or mainly on public roads.

(3) For the purposes of this Act—

The expressions “ stock ” and “ stockholder ” includes shares and shareholders ;

The expression “ special Act ” includes Provisional Orders and orders having the force of an Act of Parliament ;

The expression “ appropriate Government department ” means in relation to gas, water, and hydraulic power undertakings the Board of Trade, and in relation to electricity and tramway undertakings the Minister of Transport.

2.—This Act shall continue in force for five years and no longer, unless Parliament otherwise determines, but the expiration of this Act shall not affect the validity of anything done in pursuance thereof.

SCHEDULE

PROVISIONS RELATING TO REDEEMABLE STOCK

1.—The Company may create and issue any preference or debenture stock which they are authorized to create and issue so as to be redeemable on such terms and conditions as may be specified in a resolution of the company passed at a special meeting convened for the purpose.

2.—If it is so provided in the resolution, the Company may—

(i) call in and pay off the stock, or any part thereof, at one hundred pounds for every one hundred pounds stock at any time before the date fixed for redemption ;

(ii) redeem the stock, or any part thereof, either by paying off the stock or by issuing to any stockholder, subject to his consent, other stock in substitution therefor, and may, for the purpose of providing money for paying off the stock or providing substituted stock, create and issue new stock (redeemable or irredeemable) or re-issue stock originally created and issued as aforesaid ; so, however, that the creation and issue for that purpose of any particular class of stock does not make the total nominal amount of such stock exceed the amount of that class of stock which the Company are for the time being authorized to create except during the necessary interval between the creation and issue of the new stock and the redemption of the old stock.

3.—Save as hereinafter provided, the Company shall not redeem out of revenue any preference or debenture stock so created and issued as aforesaid, but the Company may, if they think fit at any time during a period of ten years from the creation and issue of any such preference or debenture stock, redeem out of revenue to an amount to be approved by the appropriate Government department, any such stock created and issued for the purpose of defraying abnormal reparation expenditure due to circumstances arising out of the present war, and such redemption may be effected either by way of the repayment by annual instalments of the said sum, or by way of a sinking fund calculated to pay off the same at the expiration of the period aforesaid.

THE RAILWAYS CONSTRUCTION FACILITIES ACT, 1864
(27 & 28 Vict., c. 121.)

[29th July, 1864.]

24. When the Promoters are not a Company incorporated

by special Act, or by previous Certificate under this Act, and are seven or more in number, a Company shall be incorporated by the Certificate, for the purposes thereof.

In what cases
Company shall
be incorporated.

25. Where the Promoters are not a Company incorporated by special Act, or by previous Certificate under this Act, and are less than seven in number, a Company may be incorporated by the Certificate for the purposes thereof, if the Promoters so desire.

In others Com-
pany may be
incorporated.

26. Where the Certificate incorporates a Company, it shall contain proper provisions with apt terms for creating a body corporate, by an appropriate name, with perpetual succession and a common seal, and with power to take, hold, and dispose of lands and other property, for the purposes and subject to the restrictions of the Certificate, and may confer on the Company power to borrow on mortgage, and all other usual or proper powers.

Power for
Board of Trade
to incorporate
Company by
Certificate.

27. In every such case the Companies Clauses Acts shall be incorporated with the Certificate (which shall be deemed the special Act).

Incorporation of
Companies
Clauses Acts.

28. It shall not be lawful for any Company empowered by a Certificate under this Act to issue any share created under the authority of the Certificate, nor shall any such share vest in the person accepting the same, unless and until a sum not being less than one-fifth part of the amount of such share is paid up in respect thereof.

Restriction
as to issue of
Shares.

29. Every Company, whether incorporated by special Act or by Certificate, empowered by a Certificate to borrow money, shall, as regards the money so authorized to be borrowed, be subject to the following restrictions ; namely—

Restrictions on
Company as to
borrowing, etc.

(1) They shall not exercise the said powers of borrowing any money until the whole of the share capital authorized by the Certificate is subscribed for or taken, and until one-half thereof is actually paid up, and until they prove to the Justice who is to certify under Section forty of the

Companies Clauses Consolidation Act, 1845, or (in *Scotland*) to the Sheriff who is to certify under Section forty-two of the Companies Clauses Consolidation (*Scotland*) Act, 1845, as the case may be, before he so certifies, that shares for the whole of the capital are issued and accepted, and that not less than one-fifth part of the amount of each separate share has been paid up on account thereof before or at the time of the issue or acceptance thereof, and that all such shares were taken in good faith, and are held by the subscribers or their assigns, those subscribers or their assigns being legally liable for the same (of which matters the Certificate of the Justice or Sheriff shall be sufficient evidence) :

(2) They shall not borrow a larger sum in the whole than one-third of the amount of the share capital authorized by the Certificate :

(3) They shall not out of money raised under the Certificate by calls or borrowing pay interest or dividend to a shareholder on the amount of calls made on his shares, whether created under the Certificate or otherwise (but this provision shall not prevent them paying to a shareholder under the Certificate such interest on money advanced by him beyond the amount of calls actually made, as is allowed by the Companies Clauses Acts) :

(4) They shall not out of money so raised pay or deposit any money that may be required to be paid or deposited in relation to any application to Parliament or the Board of Trade :

(5) They shall apply every part of the money so raised only for purposes for which it is by the Certificate authorized to be applied.

53. Nothing in the Certificate shall exempt the railway, or the Company, or persons to whom it belongs, from the provisions of any general Act of Parliament relating to railways, or to the better audit of the Accounts of Railway Companies, passed before or after the issuing of the Certificate, or from any revision and alteration, under the authority of Parliament,

Saving for
General Acts,
or Revision of
Charges.

of the maximum tolls and charges allowed to be taken under the Certificate.

56. Where the Certificate is obtained by a previously existing Company incorporated by special Act or by Certificate, the Certificate may authorize the Company to raise, as capital, for the purposes of the Certificate, such additional sum of money as therein limited, by the issue of new shares or new stock, either ordinary or preference, or partly ordinary and partly preference, or partly in that mode and partly by borrowing on mortgage, at the option of the Company, or as may be prescribed in the Certificate, and with power to create and issue debenture stock.

Power to
Promoters,
being a Com-
pany, to raise
additional
Capital.

In every such case the Companies Clauses Acts shall be incorporated with the Certificate.

In every such case the restrictions by this Act imposed on a Company when originally incorporated by Certificate, with respect to the exercise of their borrowing power and to the application of money raised under the Certificate by calls or borrowing, shall extend and apply to such previously existing Company in respect of such additional capital.

THE RAILWAY COMPANIES ACT, 1867
(30 & 31 Vict., c. 127.)

[20th August, 1867.]

23. All money borrowed or to be borrowed by a Company on Mortgage or Bond or Debenture Stock, under the provisions of any Act authorizing the borrowing thereof, shall have priority against the Company, and the property from time to time of the Company, over all other claims on account of any debts incurred or engagements entered into by them after the passing of this Act : Provided always, that this priority shall not affect any claim against the Company in respect of any

Priority of
Mortgages.

rentcharge granted or to be granted by them in pursuance of the Lands Clauses Consolidation Act, 1845, or the Lands Clauses Consolidation Acts Amendment Act, 1860, or in respect of any rent or sum reserved by or payable under any lease granted or made to the Company by any person in pursuance of any Act relating to the Company which is entitled to rank in priority to, or *pari passu* with, the interest or dividends on the Mortgages, Bonds, and Debenture Stock.

As to the priorities of Debentures of different issues the Judgments of Jessel, M.R., Baggallay, L.J., and Lush, L.J., in *Harrison v. Cornwall Minerals Railway Co.*, 18 Ch. D. 334, may be perused, but they are based on the private Acts of Parliament of the Defendant Company.

24. Any Company may create and issue Debenture Stock subject to the provisions of Part III [Sections twenty-two to thirty-five] of the Companies Clauses Act, 1863 (relating to Debenture Stock), and the said Part III shall, with respect to any special Act of a Company incorporating that part, whether passed or to be passed, be read and have effect as if the following words, that is to say, "not exceeding the rate prescribed in the special Act, and if no rate is prescribed, then not exceeding the rate of four pounds per centum per annum," had not been inserted in Section twenty-two of that Act; and for the purposes of the present section this Act shall be deemed a special Act passed incorporating that part; and any special Act of a Company passed before the passing of this Act, prescribing any rate, shall be read and have effect as if no rate had been prescribed therein.

26. Money borrowed by a Company for the purpose of paying off, and duly applied in paying off, bonds or mortgages of the Company given or made under the statutory powers of the Company, shall, so far as the same is so applied, be deemed money borrowed within and not in excess of such statutory powers.

Power to
issue Deben-
ture Stock.

Advances to
meet Deben-
tures falling
due.

27. Section twenty-one of the Companies Clauses Act, 1863, shall, with respect to any special Act of a Company incorporating Part II [Sections twelve to twenty-one] of that Act, whether passed or to be passed, be read and have effect as if the following words, that is to say, "but so that not less than the full nominal amount of any share or portion of stock be payable or paid in respect thereof," had not been inserted in that section.

Power to
issue residue
of original or
other Capital
at discount.

30. No dividend shall be declared by a Company until the Auditors have certified that the half-yearly Accounts proposed to be issued contain a full and true statement of the financial condition of the Company, and that the dividend proposed to be declared on any shares is *bonâ fide* due thereon after charging the revenue of the half-year with all expenses which ought to be paid thereout in the judgment of the Auditors: but if the Directors differ from the judgment of the Auditors with respect to the payment of any such expenses out of the revenue of the half-year, such difference shall, if the Directors desire it, be stated in the Report to the shareholders, and the Company in General Meeting may decide thereon, subject to all the provisions of the law then existing, and such decision shall for the purposes of the dividend be final and binding; but if no such difference is stated, or if no decision is given or any such difference, the judgment of the Auditors shall be final and binding; and the Auditors may examine the books of the Company at all reasonable times, and may call for such further Accounts, and such vouchers, papers, and information as they think fit, and the directors and Officers of the Company shall produce and give the same as far as they can, and the Auditors may refuse to certify as aforesaid until they have received the same; and the Auditors may at any time add to their Certificate, or issue to the shareholders, independently at the cost of the Company, any statement respecting the financial condition and prospects of the Company which they think material for the information of the shareholders,

Audit of
Railway
Accounts.

THE RAILWAY COMPANIES (SCOTLAND) ACT, 1867
(30 & 31 Vict., c. 126.)

[20th August, 1867.]

Extent of Act. 2. Except as in this Act expressly otherwise provided, this Act shall extend to *Scotland* only.

23. All money borrowed or to be borrowed by a Company on Mortgage, Debenture, or Bond, or Debenture Stock, under the provisions of any Act authorizing the borrowing thereof, shall have priority against the Company, and the property from time to time of the Company, over all other claims on account of any debts incurred or engagements entered into by them after the passing of this Act: Provided always that this priority shall not affect any claim, right, or remedy against the Company in respect of any Rentcharge, annual Feu Duty, or Ground Annual granted or to be granted by them in pursuance of the Lands Clauses Consolidation (*Scotland*) Act, 1845, or the Lands Clauses Consolidation Acts Amendment Act, 1860, or in respect of any rent or sum reserved by or payable under any lease granted or made to the Company by any person in pursuance of any Act relating to the Company which is entitled to rank in priority to, or *pari passu* with, the interest or dividends on the Mortgages, Debentures, Bonds, and Debenture Stock; nor shall anything hereinbefore contained affect any claim for land taken, used, or occupied by the Company for the purposes of the Railway, or injuriously affected by the construction thereof, or by the exercise of any powers conferred on the Company.

30. No dividend shall be declared by a Company until the Auditors have certified that the half-yearly Accounts proposed to be issued contain a full and true statement of the financial condition of the Company, and that the dividend proposed to be declared on any share is *bonâ fide* due thereon after charging the revenue of the half-year with all expenses which ought to be paid thereout in the judgment of the Auditors; but if the Directors differ from the judgment of the Auditors with respect to the payment of any such expenses out of the income

of the half-year, such difference shall, if the Directors desire it, be stated in the Report to the Shareholders, and the Company in general meeting may decide thereon, subject to all the provisions of the Law then existing, and such decision shall for the purposes of dividend be final and binding ; but if no such difference is stated, or if no decision is given on any such difference, the judgment of the Auditors shall be final and binding ; and the Auditors may examine the books of the Company at all reasonable times, and may call for such further Accounts, and such vouchers, papers, and information as they think fit, and the Directors and Officers of the Company shall produce and give the same as far as they can, and the Auditors may refuse to certify as aforesaid until they have received the same ; and the Auditors may at any time add to their Certificate, or issue to the shareholders independently, at the cost of the Company, any statement respecting the financial condition and prospects of the Company which they think material for the information of the shareholders.

THE REGULATION OF RAILWAYS ACT, 1868
(31 & 32 Vict., c. 119.)

[31st July, 1868.]

Interpretation
of Terms.

2. In this Act—

The term “ Railway ” means the whole or any portion of a Railway or Tramway, whether worked by steam or otherwise.

11. Whenever, after the passing of this Act, Section one hundred and two of the Companies Consolidation Act,

1845, is incorporated in a Certificate or special Act relating to a Railway Company, it shall be construed as if the words, “ where no qualification shall be prescribed by the special Act every Auditor shall have at least one share in the undertaking,” were omitted therefrom ; and so much of every Certificate and special Act relating to a Railway Company, and in force at the passing of

Auditor not
necessarily a
Shareholder.

this Act, as incorporates that portion of the said section, and so much of any special Act relating to a Railway Company, and so in force as contains a like provision, is hereby repealed.

12. With respect to the Auditors of the Company the following provisions shall have effect—

Auditors of Company and appointment of Auditor by Board of Trade. (1) The Board of Trade may, upon application made in pursuance of a resolution passed at a meeting of the Directors or at a general meeting of the Company, appoint an Auditor in addition to the Auditors of such Company, and it shall not be necessary for any such Auditor to be a shareholder in the Company ;

(2) The Company shall pay to such Auditor appointed by the Board of Trade such reasonable remuneration as the Board of Trade may prescribe ;

(3) The Auditor so appointed shall have the same duties and powers as the Auditors of the Company, and shall report to the Company ;

(4) Where, in consequence of such appointment of an Auditor or otherwise, there are three or more Auditors, the Company may declare a dividend if the majority of such Auditors certify in manner required by Section thirty of the Railway Companies Act, 1867, and the Railway Companies (*Scotland*) Act, 1867, respectively ;

(5) Where there is a difference of opinion among such Auditors, the Auditor who so differs shall issue to the shareholders, at the cost of the Company, such statement respecting the grounds on which he differs from his colleagues, and respecting the financial condition and prospects of the Company, as he thinks material for the information of the shareholders.

13. Any Company which, in the year immediately preceding, has paid a dividend on their Ordinary Stock of not less than three pounds *per centum per annum* may,

Issue of Preferred and Deferred Ordinary Stock. pursuant to the resolution of an extraordinary general meeting, divide their paid-up Ordinary Stock into two classes, to be called, the one Preferred Ordinary Stock, and the other Deferred Ordinary

Stock, and issue the same subject and according to the following provisions, and with the following consequences (that is to say)—

(1) Preferred and Deferred Ordinary Stock shall be issued only in substitution for equal amounts of paid-up Ordinary Stock, and by way of division of portions of Ordinary Stock into two equal parts ;

(6) As between Preferred Ordinary Stock and Deferred Ordinary Stock, Preferred Ordinary Stock shall bear a fixed maximum dividend at the rate of six *per centum per annum* ;

(7) In respect of dividend to the extent of the maximum aforesaid, Preferred Ordinary Stock shall at the time of its creation, and at all times afterwards, have priority over Deferred Ordinary Stock created or to be created, and shall rank *pari passu* with the undivided Ordinary Stock and the Ordinary Shares of the Company created or to be created ; and in respect of dividend, Preferred Ordinary Stock shall at all times and to all intents rank after all Preference and Guaranteed Stock and Shares of the Company created or to be created ;

(8) In each year after all holders of Preferred Ordinary Stock for the time being issued have received in full the maximum dividend aforesaid, all holders of Deferred Ordinary Stock for the time being issued shall, in respect of all dividend exceeding that maximum paid by the Company in that year on Ordinary Stock and Shares, rank *pari passu* with the holders of undivided Ordinary Stock and of Ordinary Shares of the Company for the time being issued ;

(9) If, nevertheless, in any year ending on the thirty-first day of *December*, there are not profits available for payment to all the holders of Preferred Ordinary Stock of the maximum dividend aforesaid, no part of the deficiency shall be made good out of the profits of any subsequent year, or out of any other funds of the Company.

38. The Railway Companies' Powers Act, 1864, shall take

effect and apply in the following cases in the same manner as if they were specified in Section three of that Act (that is to say)—

Extension of
Scope of Rail-
way Companies'
Powers Act,
1864.

Where a Company desire to make new provisions, or to alter any of the provisions of their special Act, or of the Companies Clauses Consolidation Act, 1845, so far as it is incorporated therewith, with respect to all or any of the matters following; namely—

(e) The Appointment and Duties of Auditors.

THE RAILWAY AND CANAL TRAFFIC ACT, 1888

(51 & 52 Vict., c. 25.)

[10th August 1888.]

This Act shall be construed as one with the Regulation of Railways Act, 1873, and the Acts amending it; and those Acts and this Act may be cited together as the Railway and Canal Traffic Acts, 1873 and 1888.

36 & 37 Vict.,
c. 48.

42.—(1) No Railway Company or Director, or Officer of a Railway Company shall, without express statutory authority, apply or use or authorize or permit the application or use of any part of the Company's funds for the purpose of acquiring either in the name of the Railway Company, or of any Director or Officer of the Railway Company, or other person, any Canal interest, or of enabling any Director or Officer of the Railway Company, or other person, to purchase or acquire any Canal interest, or of guaranteeing or repaying to any Director or Officer of the Railway Company or other person who has purchased or acquired any Canal interest the sums of money expended or liability incurred by such Director, Officer, or person, in the purchase or acquisition of such Canal interest, or any part of such money or liability.

Misapplication
of a Railway
Company's
funds for
acquisition of
unauthorized
interest in
Canal.

(2) In the event of any contravention of the provisions of this section, the Canal interest purchased in such contravention shall be forfeited to the Crown, and the Directors or

Officers of the Company who so applied or used, or authorized or permitted such application or use of the Company's funds, shall be liable to repay to the Company the sums so applied or used and the value of the Canal interest so forfeited; and proceedings to compel such repayment may be taken by any shareholder in the Company.

The Directors of a Railway Company incorporated by various Acts cannot legally apply any of the Railway capital in payment of the expenses of preparing, prosecuting, or promoting a Bill in Parliament for purposes not authorized by the Acts of the Railway Company.—*Munt v. Shrewsbury and Chester Railway Co.*, 20 L.J. Ch. 169.

THE REGULATION OF RAILWAYS ACT, 1889

(52 & 53 Vict., c. 57.)

[30th August, 1889.]

3. Whenever any Railway Company shall be ordered by the Board of Trade to provide any appliances, or execute any works, or incur any expenditure, under the provisions of this Act, which would properly be chargeable to capital account, it shall be lawful for such Company to furnish to the Board of Trade an estimate of the cost of providing such appliances, executing such works, and carrying out such order generally, and thereupon the Board of Trade shall, upon the application of the Company, fix and determine the amount which would properly be capital expenditure, and the Company may from time to time issue debentures or debenture stock in priority to or ranking *pari passu* with any existing debentures or debenture stock of such Company bearing interest at a rate not exceeding five per cent. per annum to an amount not exceeding the sum so paid and determined, and any money raised under the provisions of this section shall be applied in carrying out such requirements of the Board of Trade, and to no other purpose whatsoever, and no other authority save the Certificate of the Board of Trade shall be requisite to authorize and validate the issue of such debenture stock.

THE RAILWAY COMPANIES (ACCOUNTS AND RETURNS)
Act, 1911

(1 & 2 George V, c. 34.)

[16th December, 1911.]

1.—(1) Every Railway Company shall annually prepare Accounts and Returns in accordance with the form set out in the First Schedule to this Act, and shall submit Yearly accounts and returns in their accounts to their Auditors in that form.

(2) The Accounts and Returns shall be signed by the officer of the Company responsible for the correctness of the accounts or returns, or any part thereof, and, in the case of an incorporated Railway Company, by the chairman or deputy chairman of the Directors of the Company, and shall be made up for the year ending the thirty-first day of December, or such other day as the Board of Trade may fix in the case of any Company or class of companies to meet the special circumstances of that Company or class of companies.

(3) Every Railway Company shall forward six copies of the Accounts and Returns to the Board of Trade not later than sixty days after the expiration of the year for which the Accounts and Returns are made up, and, in the case of an incorporated Railway Company, shall forward a copy of the Accounts and Returns to any shareholder or debenture-holder of the Company who applies for a copy ;

(4) If any Railway Company fails to prepare or forward, in accordance with this section, such Accounts and Returns as are thereby required, the Company shall be liable on summary conviction to a fine not exceeding five pounds for every day during which the default continues.

(5) If any account or return prepared and forwarded under this section is false in any particular to the knowledge of any person who signs the account or return or any part thereof, that person shall be liable on conviction on indictment to imprisonment with or without hard labour for a term not exceeding one year, or to a fine not exceeding one hundred

pounds, and on summary conviction to a fine not exceeding fifty pounds.

2.—(1) A copy of the accounts numbered 1 (a), 1 (b), 1 (c), 3, and 18 in Part I of the First Schedule to this Act, as forwarded to the Board of Trade in pursuance of this Act, shall be filed by the Registrar of Companies in England, and, if any part of the railway of a Company is situated in Scotland or Ireland, also by the Registrar of Companies in Scotland or Ireland, as the case may be, and for that purpose the Board of Trade shall, on receiving copies of Accounts and Returns under this Act from a Railway Company furnish one of those copies to any Registrar by whom accounts are to be filed under this section.

**Filing of
certain
accounts by
Registrar of
Companies.**

(2) Any person may inspect the accounts filed by any Registrar of Companies in pursuance of this section on paying a fee of one shilling for each inspection as regards each Railway Company, and any person may require a copy or extract of any of those accounts to be certified by or on behalf of the Registrar on paying for the copy or extract such fee as the Board of Trade may appoint not exceeding sixpence for each folio of a certified copy or extract, or in Scotland for each sheet of two hundred words.

3.—(1) The Board of Trade may by order, made under this section, alter or add to the First Schedule to this Act in such manner as they think fit; and, on any such alteration or addition being made, this Act shall be construed as if those alterations or additions were made in the First Schedule thereto.

**Alteration of
First Schedule
by Board of
Trade.**

(6) The Board of Trade shall (in addition to the powers given to them under the foregoing provisions of this section) have power on the application of any Company, to make as respects that Company any special variation in the form of the Accounts and Returns set out in the First Schedule to this Act which appears to the Board to be required for the purpose of adapting the form to the particular circumstances of that Company.

4.—(1) A Railway Company shall not be under any obligation to prepare or to submit to their shareholders or Auditors statements of accounts or balance sheets, or to hold ordinary general meetings more than once a year, and anything which under any special Act is authorized or required to be done at a general meeting of a Railway Company to be held at any specified time may be done at the annual general meeting of the Company at whatever time held :

Removal of obligation to prepare half-yearly accounts.

Provided that nothing in this provision shall relieve a railway Company of any obligation to prepare half-yearly accounts in cases where those accounts are required in connection with any guarantee of dividend under any such statutory provisions.

(2) The Directors of an incorporated Railway Company may, if it appears to them that the profits of the Company are sufficient, declare and pay an interim dividend for the first half of any year, notwithstanding that the accounts are not audited for the half-year, and that a statement of accounts and balance sheet for the half-year is not submitted to the shareholders, and may close their register and books of transfer before the date on which the interim dividend is declared in the same manner and for the same time and subject to the same provisions as they may close their register or books before the date on which their ordinary dividend is declared or before the date of their ordinary meeting.

(3) Any statutory provisions affecting the Railway Company shall be read with the modifications necessary to bring them in conformity with this section.

6.—(1) In this Act—

Definitions and supplemental.

The expression “ Railway Company ” means any Company or person working a railway under lease or otherwise, and the expression “ railway ” means a railway authorized by special Act ;

The expression “ special Act ” includes any certificate or order having the force of an Act, and the expression “ statutory provisions ” includes the provisions of any such certificate or order ;

The expression "Registrar of Companies" means the officer performing the duty of the registration of companies under the Companies (Consolidation) Act, 1908, in England, Scotland, or Ireland, as the case may be ;

The expression "shareholder" means the holder of any share or part of any stock or other capital of a Railway Company which is not raised by means of borrowing or has not the character of borrowed money, and the expression "debenture-holder" means the holder of any debenture or part of any debenture stock or other capital of a Railway Company which is raised by means of borrowing or has the character of borrowed money.

(2) Where any light railway Company or other railway Company are exempted by virtue of any special Act from the operation of sections nine and ten of the Regulation of Railways Act, 1871, as respects their railway or any part of their railway, that Company shall, so far as regards that railway or part of the railway, be exempt from the obligation to prepare, submit, and forward Accounts and Returns under this Act ; and the Board of Trade may exempt any Company or authority from that obligation if they are satisfied that the business of a Railway Company is merely subsidiary to the main business carried on by the Company or authority, and that the Company or authority are under an obligation to prepare their accounts in a form prescribed by the Board of Trade or to present them to Parliament.

(3) Where a railway is being managed or worked by a joint committee or other body representing two or more railway companies and the receipts and expenditure of that railway are separately treated under Abstract J in the Accounts and Returns prepared and forwarded by the several companies whom the committee or body represents, the committee or body shall, for the purpose of the provisions of this Act with respect to Accounts and Returns, be deemed to be a separate Railway Company.

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THE GASWORKS CLAUSES ACT, 1847
(10 Vict., c. 15.)

[23rd April, 1847.]

2. The expression "the Special Act," used in this Act, shall be construed to mean any Act which shall be hereafter "Special Act." passed authorizing the construction of Gasworks, and with which this Act shall be so "The Undertaking." incorporated as aforesaid; "The Undertaking" shall mean the Gasworks and "The Undertakers." the works connected therewith by the special Act authorized to be constructed; and the expression "the Undertakers" shall mean the persons by the special Act authorized to construct the Gasworks.

The term "the Special Act" includes the Public Health Act, 1875.

30. The profits of the Undertaking to be divided amongst the Undertakers in any year shall not exceed the prescribed rate, or where no rate is prescribed, they shall not exceed the rate of ten pounds in the hundred by the year on the paid-up capital in the Undertaking, which in such case shall be deemed the prescribed rate, unless a larger dividend be at any time necessary to make up the deficiency of any previous dividend which shall have fallen short of the said yearly rate.

Profits of the
Company
limited.

The Undertakers may not pay the income tax in addition to the prescribed rate of dividend; they are liable to pay income tax on the entire profits when they exceed the prescribed rate.

The sum required to make up the deficiency for antecedent years may be taken from the profits of any year.—*Matthews v. Great Northern Railway Co.*, 28 L.J. Ch. 375.

As to arrears of dividend of a Gas Company, see also *Chamberlain v. The New Worcester Gaslight Co.* [1875]—*Journal of Gas Lighting and Water Supply*.

31. If the clear profits of the Undertaking in any year amount to a larger sum than is sufficient, after making up the deficiency in the dividends of any previous year as aforesaid, to make a dividend at the prescribed rate, the excess beyond the sum necessary for such purpose shall from time to time be invested in Government or other securities;

If Profits exceed
the Amount
limited, Excess
to be invested
and form a
Reserve Fund.

and the dividends and interest arising from such securities shall also be invested in the same or like securities, in order that the same may accumulate at compound interest until the fund so formed amounts to the prescribed sum, or if no sum be prescribed, a sum equal to one-tenth of the nominal capital of the Undertakers, which sum shall form a reserved fund to answer any deficiency which may at any time happen in the amount of divisible profits, or to meet any extraordinary claim or demand which may at any time arise against the Undertakers; and if such fund be at any time reduced, it may thereafter be again restored to the said sum, and so from time to time as often as such reduction shall happen.

32. Provided always, that no sum of money shall be taken from the said fund for the purpose of meeting any extraordinary claim, unless it be first certified in *England* or *Ireland* by two Justices, and in *Scotland* by the Sheriff, that the sum so proposed to be taken is required for the purpose of meeting an extraordinary claim within the meaning of this or the special Act.

33. Where such fund shall, by accumulation or otherwise, amount to the prescribed sum, or one-tenth of the nominal capital of the Company, as the case may be, the interest and dividends thereon shall no longer be invested, but shall be applied to any of the general purposes of the Undertaking to which the profits thereof are applicable.

34. If in any year the profits of the Undertaking divisible amongst the Undertakers shall not amount to the prescribed rate, such a sum may be taken from the reserved fund as, with the actual divisible profits of such year, will enable the Undertakers to make a dividend of the amount aforesaid, and so from time to time as often as the occasion shall require.

38 And with respect to the yearly receipt and expenditure of the Undertakers, be it enacted, that the Undertakers shall, in each year after they have begun to supply gas under

the provisions of this or the special Act, cause an Account in abstract to be prepared of the total Receipts and Expenditure of all rents or funds levied under the powers of this or the special Act for the year preceding, under the several distinct heads of Receipt and Expenditure, with a Statement of the Balance of such Account, duly audited and certified by the Chairman of the Undertakers, and also by the Auditors thereof, if any; and a copy of such annual Account, if the Gasworks be situated in *England* or *Ireland*, shall be transmitted, free of charge, to the Clerk of the Peace for the County in which the Gasworks are situate, and if the Gasworks be situated in *Scotland*, such copy shall be transmitted, free of charge as aforesaid, to the Sheriff Clerk of such County, and such transmission shall be made on or before the thirty-first day of *January* in each year, under a penalty of twenty pounds for each default; and a copy of such Account so sent to the said Clerk of the Peace or Sheriff Clerk shall be kept by him, and shall be open to inspection by all persons at all reasonable hours, on payment of one shilling for each inspection.

THE GASWORKS CLAUSES ACT, 1871

(34 & 35 Vict., c. 41.)

[13th July, 1871.]

35. The Undertakers shall fill up and forward to the Local Authority of every district within the limits of the special Act, on or before the twenty-fifth day of March in each year, an annual Statement of Accounts, made up to the thirty-first day of December then next preceding, as near as may be in the form and containing the particulars specified in Schedule B to this Act annexed.

The Undertakers shall keep copies of such annual Statement at their office, and sell the same to any applicant at a price not exceeding one shilling for each such copy.

The Board of Trade, with the consent of the Undertakers, may alter the said forms for the purpose of adapting them to the circumstances of the Undertaking, or of better carrying into effect the objects of this section.

In Provisional Orders in favour of Urban Sanitary Authorities under the Gas and Water Works Facilities Acts for gas supply, this section in regard to Accounts is not incorporated, nor is Schedule B, containing forms of annual Accounts. Special provisions are substituted.

THE WATERWORKS CLAUSES ACT, 1847

(10 & 11 Vict., c. 17.)

[23rd April, 1847.]

75. The profits of the Undertaking to be divided among the Undertakers in any year shall not exceed the prescribed rate, or where no rate is prescribed, they shall not exceed the rate of ten pounds in the hundred by the year on the paid-up capital in the Undertaking, which in such case shall be deemed the prescribed rate, unless a larger dividend be at any time necessary to make up the deficiency of any previous dividend which shall have fallen short of the said yearly rate.

Profits of the
Company to
be limited.

A Water Company has no power to apply its surplus profits in making up to its Ordinary Stockholders any deficiency in the prescribed rate of dividend, or a full £10 per cent. dividend, if that is the prescribed rate, for any back years prior to the coming into operation of this Act.—*Lamplough v. Company of Proprietors of the Kent Waterworks* [1903], 1 Ch. 575.

76. If the clear profits of the Undertaking in any year amount to a larger sum than is sufficient, after making up the deficiency in the dividends of any previous year as aforesaid, to make a dividend at the prescribed rate, the excess beyond the sum necessary for such purpose shall from time to time be invested in Government or other Securities, and the dividends and interest arising from such Securities, shall also be invested in the same or like Securities, in order that the same may accumulate

If Profits
exceed the
Amount limited,
Excess to be
invested and
form a
Reserved Fund.

at compound interest until the fund so formed amounts to the prescribed sum, or, if no sum be prescribed, to a sum equal to one-tenth part of the nominal capital of the Undertakers, which sum shall form a reserve fund to answer any deficiency which may at any time happen in the amount of divisible profits, or to meet any extraordinary claim or demand which may at any time arise against the Undertakers; and if such fund be at any time reduced, it may thereafter be again restored to the said sum, and so from time to time as often as such reduction shall happen.

77. Provided always, that no sum of money shall be taken from the said fund for the purpose of meeting any extraordinary claim, unless it be first certified, in *England* or *Ireland*, by two Justices, and in *Scotland* by the Sheriff, that the sum so proposed to be taken is required for the purpose of meeting any extraordinary claim within the meaning of this or the special Act.

78. When such fund shall, by accumulation or otherwise, amount to the prescribed sum, or, if no sum be prescribed, to a sum equal to one-tenth part of the nominal capital, as the case may be, the interest and dividends thereon shall no longer be invested, but shall be applied to any of the general purposes of the Undertaking to which the profits thereof are applicable.

79. If in any year the profits of the Undertaking divisible amongst the Undertakers shall not amount to the prescribed rate, such a sum may be taken from the reserved fund as, with the actual divisible profits of such year, will enable the Undertakers to make a dividend of the amount aforesaid, and so from time to time as often as the occasion shall require.

83. And with respect to the yearly receipt and expenditure of the Undertakers, be it enacted, that the Undertakers shall, in each year after they have begun to supply water under this or the special Act, cause an account in abstract to be prepared

of the whole receipt and expenditure of all rates or other moneys levied under the powers of this or the special Act for the year preceding, under the Annual Account to be made up by Undertakers, and sent to the Clerk of the Peace in England or Ireland, or to the Sheriff Clerk in Scotland, and to be open to Inspection. several distinct heads of Receipt and Expenditure, with a Statement of the Balance of such Account, duly audited and certified by the Chairman of the Undertakers, and also by the Auditors thereof, if any; and a copy of such annual Account shall be sent, free of charge, to the Clerk of the Peace for the County in which the Waterworks are situated, if the Waterworks are situated in *England* or *Ireland*, and if the Waterworks are situated in *Scotland* to the Sheriff Clerk of such County, on or before the thirty-first day of *January* in each year.

THE ELECTRIC LIGHTING (CLAUSES) ACT, 1899
(62 & 63 Vict., c. 19.)

[9th August, 1899.]

1. The provisions contained in the Schedule to this Act shall be incorporated with and form part of every Provisional Order made by the Board of Trade after the commencement of this Act under the Electric Lighting Acts, save so far as they are expressly varied or excepted by the Order, and shall, subject to any such variations or exceptions, apply, so far as applicable, to the undertaking authorized by the Order.

The said provisions shall also, with the necessary modifications, and in particular with the substitution of the words "special Act" for "special Order," be incorporated with any special Act, save so far as they are expressly varied or excepted thereby.

The expression "Electric Lighting Acts"

45 & 46 Vict., c. 56. means in this Act the Electric Lighting Acts,
51 & 52 Vict., c. 12. 1882 and 1888, and, so far as respects Scotland,
53 & 54 Vict., c. 13. the Electric Lighting Acts, 1882 and 1888, and
the Electric Lighting (Scotland) Act, 1890.

The expression "Special Act" means in this Act any Act passed after the commencement of this Act authorizing the

supply of Electricity for any public or private purposes within any area.

SCHEDULE

3.—(1) The Undertakers shall not purchase or acquire the Undertaking of or associate themselves with any Company or person supplying energy under any Licence, Provisional Order, or special Act, unless the Undertakers are authorized by Parliament to do so.

Audit of Undertakers' Accounts. 6. The following provisions shall apply as to the audit of Accounts where the Undertakers are not a Local Authority—

(1) The annual Statement of Accounts of the undertaking, before being published as provided by Section nine of the Electric Lighting Act, 1882, shall be examined 45 & 46 Vict., c. 56. and audited by such competent and impartial person as the Board of Trade appoint, and the remuneration of the Auditor shall be such as the Board of Trade direct, and that remuneration and all expenses incurred by him in or about the execution of his duties, to such an amount as the Board of Trade approve, shall be paid by the Undertakers on demand, and shall be recoverable summarily as a civil debt.

(2) The Undertakers shall give to the Auditor, his clerks, and assistants, access to such of the books and documents relating to the Undertaking as are necessary for the purposes of the audit, and shall when required furnish to him and them all vouchers and information requisite for that purpose, and shall afford to him and them all facilities for the proper execution of his and their duty.

(3) The Board of Trade may make and vary regulations prescribing the times at and the mode in which the audit shall be made and conducted, or otherwise for the purpose of giving effect to the provisions of this section.

(4) Any report made by the Auditor, or such portion thereof as the Board of Trade direct, shall be appended to the annual Statement of Accounts, and shall form part thereof for the purposes of the said Section nine.

78. Nothing in the special Order shall prevent the

Undertakers, in a case where a Local Authority are not the Undertakers, from borrowing money on the security of mortgages of the Undertaking, or shall make the consent or approval of the Board of Trade necessary to the validity or effect of any such mortgage.

As to Mortgages. Provided that every mortgage of the Undertaking shall be deemed to comprise all purchase money which may be paid to the Undertakers in the event of any sale or transfer of the Undertaking or any part thereof, under Section two of the Electric Lighting Act, 1888, or under the special Order, and that any mortgage granted by the Undertakers shall not be a charge upon the Undertaking, or any part thereof, in the event of the Undertaking or that part being sold or transferred as aforesaid, and that every mortgage deed granted by the Undertakers shall be indorsed with notice to that effect.

THE STANNARIES ACT, 1869

(32 & 33 Vict., c. 19.)

[24th June, 1869.]

2. In this Act—

The term “the Stannaries” means the Stannaries of Devon and Cornwall :

The term “Company” includes any persons or partnership body working a mine in the Stannaries :

The term “Purser” means the Purser for the time being of a Company, and if there is no Purser then the Secretary for the time being, or if there is no Secretary then the principal Agent for the time being of a Company :

The term “Cost Book” includes all books and papers relating to the business of a mine, which are for the time being kept by a Purser, or which, according to the custom of the Stannaries, or the directions of the Company, ought to be kept by him.

These interpretations are altered slightly in the Stannaries Act, 1887, Section 2, which *see*.

3. This Act extends only to mines within the Stannaries, and subject to the jurisdiction of the Court, or within the cognizance of the Vice-Warden, and nothing in this Act shall

extend to Companies registered under any of the Joint Stock Companies Acts, except where such companies are expressly mentioned or necessarily implied.

Extent and
application
of Act.

9. The Purser of every Company shall, once at least in every four months, truly enter in the cost book of the Company Accounts showing the actual financial position of the Company at the end of the financial month of the Company last preceding the time of entry, including a statement of all credits, debts, and liabilities, and distinguishing in such Accounts the amount of calls paid and calls not paid, with accurate lists of all the Shareholders for the time being in the Company, with their respective addresses, corrected from time to time as occasion requires, and all other Accounts, documents, and things which the Purser is for the time being required to enter therein by the customs of the Stannaries, or by the directions of the Company; and after the passing of this Act all existing or future Companies having any rules or regulations touching the management of the Company or conduct of the business of any mine shall file a true copy of them at the office of the Registrar without payment of any fee; and such rules or regulations shall be subject to the inspection of all applicants at reasonable times; and if any Company shall neglect to file such rules or regulations as above required, then any shareholder in or creditor of any such Company may apply for an order of the Court to file such rules or regulations forthwith, which order shall be enforced by the process of the Court.

Entry of
Accounts.

10. At any meeting of a Company with special notice the Accounts of the Company may be audited, and a call may be made.

Audit and Call.

11. A call may be made by a Company for the purpose of defraying the whole or any portion of the estimated expenses to be incurred at any time within three months after the date of the meeting at which the call is made.

Call for
prospective
Expenses.

12. At the time of making a call, a Company may direct that discount not exceeding five per cent. shall be allowed

to every shareholder on payment of the call at or within the time appointed for payment thereof, and may direct that interest at the rate of five pounds per centum per annum shall be charged on all amounts due on account of a call and remaining unpaid after one month from the time appointed for the payment thereof.

16. If a shareholder fails to pay a call on the day appointed for payment thereof, the Company may at any time thereafter, during such time as the call remains unpaid, serve a notice on him requiring him to pay such call, with or without interest and any expenses that may have accrued by reason of such non-payment, and stating to the effect that in the event of non-payment in accordance with the notice the share in respect of which such call was made will be liable to be forfeited.

17. If the requisitions of any such notice as aforesaid are not complied with, any share in respect of which such notice has been given may at any time thereafter, before payment of all calls, interest, and expenses due in respect thereof has been made, be forfeited by a resolution of the Company to that effect passed at a meeting with special notice.

18. Any share so forfeited shall be carried to an account to be called "The Account of Forfeited Shares," and shall be deemed to be the property of the Company, and may be disposed of in such manner as the Company thinks fit; and any shareholder may purchase any such share if sold.

20. Any shareholder whose share has been forfeited shall, nevertheless, be liable to pay all calls, interest, and expenses payable on or in respect of the same at the time of forfeiture.

21. Where a share in a Company is relinquished, it shall be carried to an account to be called "The Account of Relinquished Shares," and shall be deemed to be the property of the Company, and may be disposed of as the Company thinks fit, and any Shareholder may purchase any such share if sold.

THE STANNARIES ACT, 1887

(50 & 51 Vict., c. 43.)

[16th September, 1887.]

2. In this Act—

The term “ Company ” means any persons or partnership body, Joint Stock Company, Company constituted under the Companies Act, 1862, or any statutory modification thereof, and whether corporate or unincorporate, and whether limited or unlimited, engaged in or formed for working mines within the Stannaries.

Interpretation.

The term “ Purser ” means the Purser for the time being of a Company, or if there is no Purser then the Secretary for the time being, or if there is no Secretary then the principal Agent or Manager for the time being of a Company.

The term “ Cost Book ” includes all books and papers relating to the business of a mine which are for the time being kept by a Purser, or which, according to law or the custom of the Stannaries, ought to be kept by him.

13.—(1) After the commencement of this Act, any custom or rule of law to the contrary notwithstanding, all moneys

Mine Club
Funds to be
accounted for.

deducted in any mine from the wages or earnings of or otherwise contributed by the miners for the purposes of a mine club, or accident, or sick or benefit fund, shall, unless a majority of the miners shall by resolution decide otherwise, be deemed to belong to the miners and not to the Company, and the said moneys, and any contributions added thereto by the shareholders, shall be placed to a separate account, and the details thereof, showing the amount received and the several payments thereout, and to whom made during each preceding sixteen weeks, shall be set out in the Balance Sheet to be presented to the shareholders at each ordinary meeting; and a copy of the same shall be posted in the miners' dry or changing sheds, and in the account house; and it shall be lawful for the miners in any mine, if they so please, to appoint any two of themselves to audit the said Mine Club Fund Accounts.

23. The Purser of every cost book mine shall, once at least

every sixteen weeks, truly enter in the cost book of the mine

Accounts to be entered in Cost Book. Accounts showing the actual financial position of the Company at the end either of the financial month of such Company last preceding that time, and including a statement of all credits, debts, and liabilities, and distinguishing in such Accounts the amounts of calls paid, of calls not paid, and also all other accounts, documents, and things that the Purser is required to enter therein by the custom of the Stannaries or by the direction of the Company.

25. The Purser of every cost book mine shall duly convene an ordinary meeting of the shareholders in such mine at least once every sixteen weeks, for the transaction of the ordinary business of the said mine, and

Meetings to be held once every Sixteen Weeks. at every such meeting the cost book of the said mine containing the Accounts and other matters required by this Act to be entered therein, together with a list showing the name and address of every shareholder from whom any call is in arrear and unpaid, and the amount of the calls unpaid by him, shall be laid before the meeting.

26. The Accounts by the twenty-third Section of this Act directed to be entered in the cost book shall, after the same have been laid before a meeting of the shareholders in pursuance of the twenty-fifth Section,

Accounts to be Printed. be printed, and a copy thereof sent to each shareholder in the Company, and also to the lessors of the mine.

THE ASSURANCE COMPANIES ACT, 1909
(9 Edw. VII, c. 49.)

[3rd December, 1909.]

1. This Act shall apply to all persons or bodies of persons, whether corporate or unincorporate, not being registered under the Acts relating to Friendly Societies or to Trade Unions (which persons and bodies of persons are hereinafter referred to as Assurance Companies), whether established before or after the

Companies to which Act applies.

commencement of this Act and whether established within or without the United Kingdom, who carry on within the United Kingdom assurance business of all or any of the following classes—

(a) Life assurance business ; that is to say, the issue of, or the undertaking of liability under, policies of assurance upon human life, or the granting of annuities upon human life ;

(b) Fire insurance business ; that is to say, the issue of, or the undertaking of liability under, policies of insurance against loss by or incidental to fire ;

(c) Accident insurance business ; that is to say, the issue of, or the undertaking of liability under, policies of insurance upon the happening of personal accidents, whether fatal or not, disease, or sickness, or any class of personal accidents, disease, or sickness.

(d) Employers' liability insurance business ; that is to say, the issue of, or the undertaking of liability under, policies insuring employers against liability to pay compensation or damages to workmen in their employment ;

(e) Bond investment business ; that is to say, the business of issuing bonds or endowment certificates by which the Company, in return for subscriptions payable at periodical intervals of two months or less, contract to pay the bondholder a sum at a future date, and not being life assurance business as hereinbefore defined ;

subject as respects any class of assurance business to the special provisions of this Act relating to business of that class.

A Company registered under the Companies Acts which transacts assurance business of any such class as aforesaid in any part of the world shall for the purposes of this provision be deemed to be a Company transacting such business within the United Kingdom.

2.—(1) Every Assurance Company shall deposit and keep deposited with the Paymaster-General for and

Deposit.

on behalf of the Supreme Court the sum of twenty thousand pounds.

(2) The sum so deposited shall be invested by the Paymaster-General in such of the securities usually accepted by the Court for the investment of funds placed under its administration as the Company may select, and the interest accruing due on any such securities shall be paid to the Company.

(3) The deposit may be made by the subscribers of the Memorandum of Association of the Company, or any of them, in the name of the proposed Company, and, upon the incorporation of the Company, shall be deemed to have been made by, and to be part of the assets of, the Company, and the Registrar shall not issue a certificate of incorporation of the Company until the deposit has been made.

(4) Where a Company carries on, or intends to carry on, assurance business of more than one class, a separate sum of twenty thousand pounds shall be deposited and kept deposited under this section as respects each class of business, and the deposit made in respect of any class of business in respect of which a separate assurance fund is required to be kept shall be deemed to form part of that fund, and all interest accruing due on any such deposit or the securities in which it is for the time being invested shall be carried by the Company to that fund.

(5) The Paymaster-General shall not accept a deposit except on a warrant of the Board of Trade.

(6) The Board of Trade may make rules with respect to applications for warrants, the payment of deposits, and the investment thereof or dealing therewith, the deposit of stocks or other securities in lieu of money, the payment of the interest or dividends from time to time accruing due on any securities in which deposits are for the time being invested, and the withdrawal and transfer of deposits, and the rules so made shall have effect as if they were enacted in this Act, and shall be laid before Parliament as soon as may be after they are made.

(7) This section shall apply to an Assurance Company registered or having its head office in Ireland, subject to the following modifications—

References to the Supreme Court shall be construed as references to the Supreme Court of Judicature in Ireland, and references to the Paymaster-General shall be construed as references to the Accountant-General of the last-mentioned Court.

3.—(1) In the case of an Assurance Company transacting other business besides that of assurance or transacting more than one class of assurance business, a separate **Separation of Funds.** account shall be kept of all receipts in respect of the assurance business or of each class of assurance business, and the receipts in respect of the assurance business, or, in the case of a Company carrying on more than one class of assurance business, of each class of business, shall be carried to and form a separate assurance fund with an appropriate name: Provided that nothing in this section shall require the investments of any such fund to be kept separate from the investments of any other fund.

(2) A fund of any particular class shall be as absolutely the security of the Policy Holders of that class as though it belonged to a Company carrying on no other business than assurance business of that class, and shall not be liable for any contracts of the Company for which it would not have been liable had the business of the Company been only that of assurance of that class, and shall not be applied, directly or indirectly, for any purposes other than those of the class of business to which the fund is applicable.

4. Every Assurance Company shall, at the expiration of each financial year of the Company, prepare—
Accounts and Balance Sheets. (a) A Revenue Account for the year in the form or forms set forth in the First Schedule to this Act and applicable to the class or classes of assurance business carried on by the Company;

(b) A Profit and Loss Account in the form set forth in the Second Schedule to this Act, except where the Company carries on assurance business of one class only and no other business;

(c) A Balance Sheet in the form set forth in the Third Schedule to this Act.

5.—(1) Every Assurance Company shall, once in every five years, or at such shorter intervals as may be prescribed by the instrument constituting the Company, **Actuarial Report and Abstract.** or by its regulations or bye-laws, cause an investigation to be made into its financial condition, including a valuation of its liabilities, by an Actuary, and shall cause an abstract of the report of such Actuary to be made in the form or forms set forth in the Fourth Schedule to this Act and applicable to the class or classes of assurance business carried on by the Company.

(2) The foregoing provisions of this section shall also apply whenever at any other time an investigation into the financial condition of an Assurance Company is made with a view to the distribution of profits, or the results of which are made public.

6. Every Assurance Company shall prepare a statement of its assurance business at the date to which the Accounts of the Company are made up for the purposes **Statement of Assurance Business.** of any such investigation as aforesaid in the form or forms set forth in the Fifth Schedule to this Act and applicable to the class or classes of assurance business carried on by the Company: Provided that, if the investigation is made annually by any Company, the Company may prepare such a statement at any time, so that it be made at least once in every five years.

7.—(1) Every Account, Balance Sheet, Abstract, or Statement hereinbefore required to be made shall be printed, and **Deposit of Accounts, etc., with Board of Trade.** four copies thereof, one of which shall be signed by the Chairman and two Directors of the Company and by the principal Officer of the Company, and if the Company has a Managing Director, by the Managing Director, shall be deposited at the Board of Trade within six months after the close of the period to which the Account, Balance Sheet, Abstract, or Statement relates; Provided that, if in any case it is made to appear to the Board of Trade that the circumstances are such that a longer period than six months should be allowed, the Board may extend that period by such period not exceeding three months as they think fit.

(2) The Board of Trade shall consider the Accounts, Balance Sheets, Abstracts, and Statements so deposited, and, if any such Account, Balance Sheet, Abstract, or Statement appears to the Board to be inaccurate or incomplete in any respect, the Board shall communicate with the Company with a view to the correction of any such inaccuracies and the supply of deficiencies.

(3) There shall be deposited with every Revenue Account and Balance Sheet of a Company any report on the affairs of the Company submitted to the Shareholders or Policy Holders of the Company in respect of the financial year to which the Account and Balance Sheet relates.

(4) Where an Assurance Company registered under the Companies Acts in any year deposits its Accounts and Balance Sheet in accordance with the provisions of this section, the Company may, at the same time, send to the Registrar a copy of such Accounts and Balance Sheet ; and, where such copy is so sent, it shall not be necessary for the Company to send to the Registrar a Statement in the form of a Balance Sheet, as required by Sub-section (3) of Section

8 Edw. VII,
c. 69.

twenty-six of the Companies (Consolidation) Act, 1908, and the copy of the Accounts and Balance Sheet so sent shall be dealt with in all respects as if it were a Statement sent in accordance with that sub-section.

8. A printed copy of the last-deposited Accounts, Balance Sheet, Abstract, or Statement, shall on the application of any Shareholder or Policy Holder of the Company be forwarded to him by the Company by post or otherwise.

Right of Share-
holders, etc.,
to Copies of
Accounts, etc.

9. Where the Accounts of an Assurance Company are not subject to Audit in accordance with the provisions of the Companies (Consolidation) Act, 1908, or the Companies Clauses Consolidation Act, 1845, relating to Audit, the accounts of the Company

Audit of
Accounts.

shall be audited annually in such manner as the Board of Trade may prescribe, and the regulations made for the purpose may apply to any such Company the provisions of the Companies (Consolidation) Act, 1908, relating to Audit, subject

to such adaptations and modifications as may appear necessary or expedient.

10. Every Assurance Company which is not registered under the Companies Acts, or which has not incorporated in its Deed of Settlement Section ten of the Companies Clauses Consolidation Act, 1845, shall keep a "Shareholders Address Book," in accordance with the provisions of that section, and shall, on the application of any Shareholder or Policy Holder of the Company, furnish to him a copy of such book, on payment of a sum not exceeding sixpence for every hundred words required to be copied.

**List of
Shareholders.**

22. The Board of Trade may, on the application or with the consent of an Assurance Company, alter the forms contained in the Schedules to this Act as respects that Company, for the purposes of adapting them to the circumstances of that Company.

**Alteration of
Forms.**

23. Any Assurance Company which makes default in complying with any of the requirements of this Act shall be liable to a penalty not exceeding one hundred pounds, or, in the case of a continuing default, to a penalty not exceeding fifty pounds for every day during which the default continues, and every Director, Manager, or Secretary, or other Officer or Agent of the Company who is knowingly a party to the default shall be liable to a like penalty.

**Penalty for
Non-compliance
with Act.**

24. If any Account, Balance Sheet, Abstract, Statement, or other document required by this Act is false in any particular to the knowledge of any person who signs it, that person shall be guilty of a misdemeanour and shall be liable on conviction on indictment to fine and imprisonment, or on summary conviction to a fine not exceeding fifty pounds.

**Penalty for
falsifying
Statements, etc.**

**Application to
Fire Insurance
Companies.**

31. Where a Company carries on fire insurance business, this Act shall apply with respect to that business, subject to the following modifications—
(a) It shall not be necessary for the Company to prepare any statement of its fire insurance business in

accordance with the Fourth or Fifth Schedules to this Act :

(b) Such of the provisions of this Act as relate to deposits to be made under this Act shall not apply with respect to the fire insurance business carried on by the Company, if the Company has commenced to carry on that business within the United Kingdom before the passing of this Act :

(c) Such of the provisions of this Act as relate to deposits to be made under this Act shall not apply where the Company is an association of owners or occupiers of buildings or other property which satisfies the Board of Trade that it is carrying on, or is about to carry on, business wholly or mainly for the purpose of the mutual insurance of its members against damage by or incidental to fire caused to the houses or other property owned or occupied by them :

(d) It shall not be necessary to make a deposit in respect of fire insurance business where the Company has made a deposit in respect of any other class of assurance business, and where a Company, having made a deposit in respect of fire insurance business, commences to carry on life assurance business or employers' liability insurance business, the Company may transfer the deposit so made to the account of that other business, and after such transfer the deposit shall be treated as if it had been made in respect of such other business :

(e) So much of this Act as requires an Assurance Company transacting other business besides assurance business, or more than one class of assurance business, to keep separate funds into which all receipts in respect of the assurance business or of each class of assurance business are to be paid shall not apply as respects fire insurance business.

32. Where a Company carries on accident insurance business, this Act shall apply with respect to that business, subject to the following modifications—

Application to
Accident Insur-
ance Companies.

(a) In lieu of the provisions of Section five and six of this Act the following provisions shall be substituted—

“ The Company shall annually prepare a statement of its accident insurance business in the form set forth in the Fourth Schedule to this Act and applicable to accident insurance business, and the statement shall be printed, signed, and deposited at the Board of Trade in accordance with Section seven of this Act ” :

(b) Such of the provisions of this Act as relate to deposits to be made under this Act shall not apply with respect to the accident insurance business carried on by the Company if the Company has commenced to carry on that business in the United Kingdom before the passing of this Act :

(c) It shall not be necessary to make or keep a deposit in respect of accident insurance business where the Company has made a deposit in respect of any other class of assurance business, and where a Company, having made a deposit in respect of accident insurance business, commences to carry on life assurance business or employers' liability insurance business, the Company may transfer the deposit so made to the account of that other business, and after such transfer the deposit shall be treated as if it had been made in respect of such other business :

(d) So much of this Act as requires an Assurance Company transacting other business besides assurance business, or more than one class of assurance business, to keep separate funds into which all receipts in respect of the assurance business or of each class of assurance business are to be paid shall not apply as respects accident insurance business.

33.—(1) Where a Company carries on employers' insurance business, this Act shall apply, with respect to that business, subject to the following modi-

Application
to Employers'
Liability Insur-
ance Companies.

fications—

(a) This Act shall not apply where the Company is an association of employers which satisfies the Board of Trade that it is carrying on, or is about to carry on, business wholly or mainly for the purpose of the mutual insurance of its members against liability to pay compensation or damages to workmen employed by

them, either alone or in conjunction with insurance against any other risk incident to their trade or industry :

(b) This Act shall not apply where the Company carries on the employers' liability insurance business as incidental only to the business of marine insurance by issuing marine policies, or policies in the form of marine policies, covering liability to pay compensation or damages to workmen as well as losses incident to marine adventure or adventure analogous thereto :

(c) In lieu of the provisions of Section five and six of this Act the following provisions shall be substituted—

“The Company shall annually prepare a statement of its employers' liability insurance business in the form set forth in the Fourth Schedule to this Act and applicable to employers' liability insurance business, and shall cause an investigation of its estimated liabilities to be made by an Actuary so far as may be necessary to enable the provisions of that form to be complied with, and the statement shall be printed, signed, and deposited at the Board of Trade in accordance with Section seven of this Act.”

(d) Such of the provisions of this Act as relate to deposits to be made under this Act shall not apply with respect to the employers' liability insurance business carried on by a Company where the Company had commenced to carry on that business within the United Kingdom before the twenty-eighth day of August, nineteen hundred and seven :

(e) As soon as the employers' liability fund set apart and secured for the satisfaction of the claims of Policy Holders of that class amounts to forty thousand pounds, the Paymaster-General shall, if the Company has made a deposit in respect of any other class of assurance business, return to the Company the money deposited in respect of its employers' liability insurance business, and it shall not thereafter be necessary for the Company to keep any sum deposited in respect of that business, so long as the sum deposited in respect of any other class of assurance business is kept deposited :

(f) Where money is paid into a County Court under the provisions of the Eighth Schedule to this Act, the Court shall (unless the Court for special reason sees fit to direct otherwise) order the lump sum to be invested or applied in the purchase of an annuity or otherwise, in such manner that the duration of the benefit thereof may, as far as possible, correspond with the probable duration of the incapacity.

34. Where a Company carries on bond investment business, this Act shall apply with respect to that business, subject to the following modifications—

Application to Bond Investment Companies. (a) The expression “Policy” includes any bond, certificate, receipt, or other instrument evidencing the contract with the Company, and the expression “Policy Holder” means the person who for the time being is the legal holder of such instrument :

(b) Such of the provisions of this Act as relate to deposits shall not apply with respect to the bond investment business carried on by the Company, if the Company has commenced to carry on that business in the United Kingdom before the passing of this Act :

(c) As soon as the bond investment fund set apart and secured for the satisfaction of the claims of the Policy Holders of that class amounts to forty thousand pounds, the Paymaster-General shall, if the Company has made a deposit in respect of any other class of assurance business, return to the Company the money deposited in respect of its bond investment business, and it shall not thereafter be necessary for the Company to keep any sum deposited in respect of that business, so long as the sum deposited in respect of any other class of business is kept deposited :

(d) The first statement of the bond investment business of the Company shall be deposited at the Board of Trade on or before the thirtieth day of June, nineteen hundred and eleven.

For Schedules to this Act, consisting of Revenue Accounts, Balance Sheets, etc., see Appendix.

THE BUILDING SOCIETIES ACT, 1874
(37 & 38 Vict., c. 42.)

[30th July, 1874.]

Commencement of Act. 2. This Act shall commence and take effect on the second day of November, one thousand eight hundred and seventy-four.

Purpose for which Societies may be established. 13. Any number of persons may establish a Society under this Act, either terminating or permanent, for the purpose of raising by the subscription of the Members a Stock or Fund for making advances to Members out of the funds of the Society, upon security of freehold, copyhold or leasehold estate by way of mortgage; and any Society under this Act shall, so far as is necessary for the said purpose, have power to hold land, with the right of foreclosure, and may from time to time raise funds by the issue of shares of one or more denominations, either paid up in full or to be paid by periodical or other subscriptions, and with or without accumulating interest, and may repay such funds when no longer required for the purposes of the Society. Provided always that any land to which any such Society may become absolutely entitled by foreclosure, or by surrender, or other extinguishment of the right of redemption, shall, as soon afterwards as may be conveniently practicable, be sold or converted into money.

The Auditor should at each audit inquire into the position of each property "in hand," and the reasons why it has not been disposed of. The Building Societies Act, 1894, requires a Schedule of such properties to be affixed to the Accounts presented to the members.

Power to borrow Money. 15. With respect to the borrowing of money by Societies under this Act, the following provisions shall have effect—

(1) Any Society under this Act may receive deposits or loans at interest, within the limit in this section provided, from the members or other persons, or from corporate bodies, Joint Stock Companies, or from any terminating Building Society, to be applied to the purposes of the Society;

(2) In a permanent Society the total amount so received on deposit or loan and not repaid by the Society shall not at any time exceed two-thirds of the amount for the time being secured to the Society by mortgages from its members ;

(3) In a terminating Society the total amount so received and not repaid may either be a sum not exceeding such two-thirds as aforesaid, or a sum not exceeding twelve months' subscriptions on the shares for the time being in force ;

(4) Any deposits with or loans to a Society under this Act made before the commencement of this Act in accordance with its certified rules, are hereby declared to be valid and binding on the Society, but no further deposits or loans shall be received by such Society, except within limits provided by this section ;

(5) Every deposit book, or acknowledgment or security of any kind given for a deposit or loan by a Society, shall have printed or written therein or thereon the whole of the fourteenth and fifteenth Sections of the present Act.

16. The rules of every Society hereafter established under this Act shall set forth—

Matters to be set forth in the Rules. (1) The name of the Society and chief office or place of meeting for the business of the Society ;

(3) The purposes to which the funds of the Society are to be applied, and the manner in which they are to be invested ;

(6) The manner of appointing, remunerating, and removing the Board of Directors or Committee of Management, Auditors, and other Officers ;

(8) Provision for an annual or more frequent audit of the Accounts and inspection by the Auditors of the mortgages and other securities belonging to the Society ;

(11) Provision for the custody of the mortgage deeds and other securities belonging to the Society.

(12) The powers and duties of the Board of Directors, or Committee of Management, and other Officers.

25. Any Society under this Act may from time to time, as

the rules permit, invest any portion of the funds of the Society, not immediately required for its purposes, upon real or leasehold securities, or in the public funds, or in or upon any Parliamentary stock or securities, or in or upon any stock or securities payment of the interest on which is guaranteed by authority of Parliament, or in the case of terminating Societies with other Societies under this Act ; and for the purpose of investments in the public funds or upon security of copyhold or customary estate the Society, or the Board of Directors or Committee of Management thereof, may from time to time appoint and remove Trustees.

The powers of investment under this section have been extended by the Building Societies Act, 1894, Sec. 17, so as to include power to invest in or upon any security in which Trustees are for the time being authorized by law to invest.

37. A Society under this Act may purchase, build, hire, or take upon lease any building for conducting its business, and may adapt and furnish the same, and may purchase or hold upon lease any land for the purpose only of erecting thereon a building for conducting the business of the Society, and may sell, exchange, or let such building, or any part thereof.

40. The Secretary or other Officer of every Society under this Act shall, once in every year at least, prepare an Account of all the Receipts and Expenditure of the Society since the preceding statement, and a general Statement of its funds and effects, liabilities and assets, showing the amounts due to the holders of the various classes of shares respectively, to depositors and creditors for loans, and also the balance due or outstanding on their mortgage securities (not including prospective interest), and the amount invested in the funds or other securities ; and every such Account and Statement shall be attested by the Auditors, to whom the mortgage deeds and other securities belonging to the Society shall be produced, and such Account and Statement shall be countersigned by the Secretary or other Officer ; and every

**Investment
of Surplus
Funds.**

**Buildings for the
purpose may be
Purchased or
Leased.**

**Societies shall
make Annual
Audits and
Statements of
the Funds to
the Members.**

member, depositor, and creditor for loans shall be entitled to receive from the Society a copy of such Account and Statement, and a copy thereof shall be sent to the Registrar within fourteen days after the annual or other general meeting at which it is presented, and another copy thereof shall be suspended in a conspicuous place in every office of the Society under this Act.

THE BUILDING SOCIETIES ACT, 1894

(57 & 58 Vict., c. 47.)

[25th August, 1894.]

1. The rules of every Society under the Building Societies Acts established or substituting a new set of
Matters to be set forth in Rules. rules for its existing rules after the passing of this Act shall set forth—

(a) The manner in which the stock or funds of the Society is or are to be raised ;

(b) The terms upon which unadvanced subscription shares are to be issued ; the manner in which the contributions are to be paid to the Society, and withdrawn by the members, with tables, where applicable in the opinion of the Registrar, showing the amount due by the Society for principal and interest separately ;

(c) The terms upon which paid-up shares, if any, are to be issued and withdrawn, with tables, where applicable in the opinion of the Registrar, showing the amount due by the Society for principal and interest separately ;

(d) Whether preferential shares are to be issued, and, if so, within what limits ;

(e) The manner in which advances are to be made and repaid ; the deductions, if any, for premiums, and the conditions upon which a borrower can redeem the amount due from him before the expiration of the period for which the advance was made, with tables, where applicable in the opinion of the Registrar, showing the amount due from the borrower after each stipulated payment ;

(f) The manner in which losses are to be ascertained and provided for ;

(h) Whether the Society intends to borrow money, and, if so, within what limits not exceeding those prescribed by the Building Societies Acts.

2.—(1) Every Annual Account and Statement under Section forty of the Building Societies Act, 1874, shall be made up to the end of the official year of the Society to which it relates, and shall be in such form and shall contain such particulars as the Chief Registrar of Friendly Societies may from time to time with the approval of a Secretary of State direct, either generally or with respect to any Society or class of Societies. The form of Annual Account and Statement prescribed for general use by the Chief Registrar under this section, and every alteration of that form, shall as soon as practicable be laid before each House of Parliament, and shall not come into operation until the expiration of forty days from the date at which it is so laid. Provided that every such Account and Statement shall set forth—

Annual Account
and Statement
37 & 38 Vict.,
c. 42.

(a) With respect to mortgages to the Society upon each of which the present debt does not exceed five thousand pounds (not being mortgages where the repayments are upwards of twelve months in arrear, or where the property has for upwards of twelve months been in possession of the Society), the number of all such mortgages, and the aggregate amount owing thereon at the date of the Account or Statement, such information being given separately in respect of each of the four following classes—

(i) Where the debt does not exceed five hundred pounds :

(ii) Where the debt exceeds five hundred pounds and does not exceed one thousand pounds :

(iii) Where the debt exceeds one thousand pounds and does not exceed three thousand pounds :

(iv) Where the debt exceeds three thousand pounds and does not exceed five thousand pounds ; and

(b) With respect to any other mortgage to the Society, the particulars shown by the appropriate tabular form in the First Schedule to this Act.

The form prescribed by the Chief Registrar of Friendly Societies presented pursuant to this Act was ordered by the House of Commons to be printed on the 5th September, 1895, and will be found in the Appendix. Affixed to the Form is a Certificate for the Auditors to sign, but no authority was given by this section to the Registrar to issue this Certificate as part of his Form, and it may, therefore, be disregarded by Auditors. The form of Certificate is, however, a good one, and may usefully be adopted.

(2) Every Auditor, in attesting any such Annual Account or Statement, shall either certify that it is correct, duly vouched, and in accordance with law, or specially report to the Society in what respect he finds it incorrect, unvouched, or not in accordance with law, and shall also certify that he has at that audit actually inspected the mortgage deeds and other securities belonging to the Society, and shall state the number of properties with respect to which deeds have been produced to and actually inspected by him.

(3) A copy of every such Annual Account and Statement shall be sent to the Registrar within fourteen days after the annual or other general meeting at which it is presented, or within three months after the expiration of the official year of the Society, whichever period expires first.

(4) For the purposes of this section the expression "Official year" shall mean, in the case of any Society established after the passing of this Act, the year ending with the thirty-first day of December, and, in the case of any Society established before the passing of this Act, the year ending with the time up to which its Annual Account and Statement is made at the passing of this Act.

(5) This section shall not come into operation until the expiration of twelve months after the passing of this Act.

As the Act received the Royal assent on the 25th August, 1894, this section came into operation on 26th August, 1895.

3. Notwithstanding anything in the rules of any Society under the Building Societies Acts, one at least of the Auditors of the Society shall be a person who publicly carries on the business of an Accountant.

Auditors.

For definition of a person who publicly carries on the business of an Accountant, *see* remarks in Chapter I.

4.—(1) The Registrar may, if he thinks fit, on the application of ten members of a Society under the Building Societies Acts, each of whom has been a member of the Society for not less than twelve months immediately preceding the date of the application, appoint an Accountant or Actuary to inspect the books of the Society, and to report thereon.

Inspection of Books. (2) Provided as follows—

(a) The applicants shall deposit with the Registrar such sum as a security for the costs of the proposed inspection as the Registrar may require ; and

(b) All expenses of and incidental to any such inspection shall be defrayed by the applicants, or out of the funds of the Society, or by the members or officers, or former members or officers, of the Society in such proportions as the Registrar may direct.

(3) A person appointed under this section shall have power to make copies of any books of the Society, and to take extracts therefrom at all reasonable hours, at the registered office of the Society, or at any place where the books are kept.

(4) The Registrar shall communicate the results of any such inspection to the applicants and to the Society.

5.—(1) The Registrar may, on the application of one-tenth of the whole number of members of a Society under the building Societies Acts, or one hundred members in the case of a Society consisting of more than one thousand members, and with the consent of the Secretary of State, either—

Power of Registrar on application to appoint Inspector or call Special Meeting.

(a) appoint an Inspector to examine into and report on the affairs of the Society ; or

(b) call a special meeting of the Society.

(2) Provided as follows—

(a) The application under this section shall be supported by such evidence as the Registrar may direct for the purpose of showing that the applicants have good reason for requiring the inspection to be made or the meeting to be called, and that they are not actuated by malicious motives in their application ; and

(b) Such notice of the application shall be given to the Society as the Registrar may direct ; and

(c) The Registrar shall require the applicants to give security for the costs of the proposed inspection or meeting before the Inspector is appointed or the meeting is called ; and

(d) All expenses of and incidental to the inspection or meeting shall be defrayed by the applicants, or out of the funds of the Society, or by the members or officers, or former members or officers, of the Society, in such proportions as the Registrar may direct.

13.—(1) A Society under the Building Societies Acts shall not advance money on the security of any freehold, copyhold, or leasehold estate which is subject to a prior mortgage, unless the prior mortgage is in favour of the Society making the advance.

**Prohibition
of Advances
on Second
Mortgage.**

(2) Provided that this section shall not apply to any Society in Scotland or Ireland which is at the passing of this Act authorized by the rules to make advances upon second mortgage.

14. In calculating the amount for the time being secured to a Society under the Building Societies Acts by mortgages from its members for the purpose of ascertaining the limits of its power to receive deposits or loans at interest, the amount secured on properties the payments in respect of which were upwards of twelve months in arrear at the date of the Society's last preceding Annual Account and Statement, and the amount secured on properties of which the Society had been twelve months in possession at the date of such Account and Statement, shall be disregarded.

**Limits of
Borrowing
Power.**

16.—(1) A Society under the Building Societies Acts may—

**Deposits in
and Invest-
ments through
Savings Banks.**

(a) Deposit in a Savings Bank any money belonging to the Society ; and

(b) Invest in Government stock through a Savings Bank any money of the Society.

(2) In this section the expression "Savings Bank" and
 56 & 57 Vict., "Government Stock" have respectively the same
 c. 69. meaning as in the Savings Bank Act, 1893.

17. The powers of investment under Section twenty-five
 of the Building Societies Act, 1874, shall include power to
 invest in or upon any security in which Trustees
 are for the time being authorized by law to
 invest.

**Extension of
Powers of
Investment.**

22. If any person wilfully makes, orders, or allows to be
 made any false statement in any document required by the
 Building Societies Acts to be sent to the Regis-
 trar, or by erasure, omission, or otherwise
 wilfully falsifies any such document, he shall be liable
 on summary conviction to a fine not exceeding fifty
 pounds.

False entries.

23. No Director, Secretary, Surveyor, Solicitor, or other
 Officer of a Society under the Building Societies Acts shall,
 in addition to the remuneration prescribed or
 authorized by the rules of the Society, receive
 from any other person any gift, bonus, commis-
 sion, or benefit, for or in connection with any loan made by
 the Society, and any person paying or accepting any such gift,
 bonus, commission, or benefit shall be liable on summary
 conviction to a fine not exceeding fifty pounds, and, in default
 of payment, to be imprisoned with or without hard labour
 for any time not exceeding six months, and the person accepting
 any such gift, bonus, commission, or benefit, shall, as and when
 directed by the Court by whom he is convicted, pay over to
 the Society the amount or value of such gift, bonus, com-
 mission, or benefit, and in default of such payment shall be
 liable to be imprisoned with or without hard labour for any
 time not exceeding six months.

**Gifts, etc., not
to be accepted
by Officials.**

As to whether an Auditor is an Officer under this section, *see*
 remarks in Chapter I and note to Industrial and Provident Societies
 Act, 1893, Sec. 50, *post*.

THE FRIENDLY SOCIETIES ACT, 1896
(59 & 60 Vict., c. 25.)

[7th August, 1896.]

22.—(1) A registered Society or Branch may contribute to the funds and take part by delegates or otherwise in the government of any other registered Society or registered Branch of a Society, as provided in the rules of that first-named Society or Branch, without becoming a Branch under this Act of that other Society or Branch.

Contributions
from one
Society to
another.

(2) This section shall, in respect of contributing to the funds and taking part in the government of a Medical Society, that is to say, a Society for the purpose of relief in sickness by providing medical attendance and medicine, extend to any registered Trade Union or Branch of a Registered Trade Union.

25.—(1) Every registered Society and Branch shall have one or more Trustees.

Appointment
of Trustees.

(4) The same person shall not be a Secretary or Treasurer of a registered Society or Branch, and a Trustee of that Society or Branch.

26.—(1) Every registered Society and Branch shall once at least in every year submit its Accounts for audit either to one of the Public Auditors appointed as in this Act mentioned, or to two or more persons appointed as the rules of the Society or Branch provide.

Audit.

(2) The Auditors shall have access to all the Books and Accounts of the Society or Branch, and shall examine the Annual Return mentioned in this Act, and verify the Annual Return with the Accounts and Vouchers relating thereto, and shall either sign the Annual Return as found by them to be correct, duly vouched, and in accordance with law, or specially report to the Society or Branch in what respects they find it incorrect, unvouched, or not in accordance with law.

27.—(1) Every registered Society and Branch shall, once in every year, not later than the thirty-first day of May, send to the Registrar a return (in this Act called the Annual Return) of the receipts and expenditure, funds, and effects of the Society or Branch as audited.

Annual Return.

(2) The Annual Return must—

(a) Show separately the expenditure in respect of the several objects of the Society or Branch ; and

(b) Be made out to the thirty-first day of December then last inclusively ; and

(c) State whether the audit has been conducted by a Public Auditor appointed as by this Act provided, and by whom, and, if by persons other than a Public Auditor, state the name, address, and calling or profession of every such person, and the manner in which, and the authority under which, he is appointed.

(3) The Society or Branch shall, together with the Annual Return, send a copy of any special report of the Auditors.

(4) In the case of a Branch the Annual Return shall be sent to the Registrar through an officer appointed in that behalf by the Society of which the Branch forms part.

28.—(1) Every registered Society and Branch shall, except as in this section provided, once at least in
Quinquennial Valuation. every five years either—

(a) Cause its assets and liabilities to be valued by a valuer to be appointed by the Society or Branch and send to the Registrar a report on the condition of the Society or Branch ; or

(b) Send to the Registrar a return of the benefits assured and contributions receivable from all the members of the Society or Branch, and of all its funds and effects, debts and credits, accompanied by such evidence in support thereof as the Chief Registrar prescribes.

29. Every registered Society and Branch shall keep a copy of the last Annual Balance Sheet, and of the last Quinquennial Valuation, together with any special report of the Auditors, always hung up in a conspicuous place at the registered Office of the Society or Branch.
Copy of last Balance Sheet.

30.—(1) For the purpose of audits and valuations to be made under this Act the Treasury may appoint Public Auditors and Valuers, and may determine the rates of

remuneration to be paid by Societies and Branches for the services of those Auditors and Valuers; but the employment of those Auditors and Valuers shall not be compulsory.

(2) The Treasury may, out of money to be provided by Parliament, pay to the Public Auditors and Valuers such remuneration (if any) as the Treasury may allow.

37. A registered Society or Branch may subscribe out of its funds to any hospital, infirmary, charitable or provident institution, any annual or other sum which may be necessary to secure to members of the Society or Branch and their families the benefits of the hospital, infirmary, or other institution, according to its rules.

38. Every registered Society and Branch shall deliver to every person on demand, on payment of a sum not exceeding one shilling, a copy of the rules of the Society or Branch.

39. Every registered Society and Branch shall supply gratuitously to every member or person interested in its funds, on his application, either

Right to supply
of copies of
the Rules.
Annual Return.

(a) a copy of the last Annual Return of the Society or Branch; or

(b) a Balance Sheet or other document duly audited containing the same particulars as to the receipts and expenditure, funds and effects, of the Society or Branch as are contained in the Annual Return.

40. A member or person having an interest in the funds of a registered Society or Branch may inspect the books at all reasonable hours at the registered office of the Society or Branch, or at any place where the books are kept, except that the member or person shall not, unless he is an officer of the Society or Branch, or is specially authorized by a resolution of the Society or Branch to do so, have the right to inspect the Loan Account of any other member without the written consent of that member.

44.—(1) The Trustees of a registered Society or Branch

may, with the consent of the committee or of a majority of the members present and entitled to vote in general meeting, invest the funds of the Society or Branch, or any part thereof, to any amount in any of the following ways—

**Investment
of Funds.**

(a) in the Post Office Savings Banks, or in any Savings Bank certified under the Trustee Savings Bank Act, 1863 ; or

(b) in the public funds ; or

(c) with the National Debt Commissioners as in this Act provided ; or

(d) in the purchase of land, or in the erection or alteration of offices or other buildings thereon ; or

(e) upon any other security expressly directed by the rules of the Society or Branch, not being personal security, except as in this Act authorized with respect to loans ; or

(f) in any investment in which Trustees are for the time being by law authorized to invest trust funds.

(f) is added by the Friendly Societies Act, 1908, Sec. 4.

(2) The rules of a Society with Branches, and of any Branch thereof, may provide for the investment of funds of the Society or of that Branch by the Trustees of any Branch, or by the Trustees of the Society, and the consent required for any such investment shall be the consent of the Committee, or of such majority as aforesaid of the Society or Branch by whom the funds are invested.

45.—(1) A registered Society and, subject to the rules of the Society, a registered Branch may advance to a member of at least one full year's standing any sum not exceeding one-half of the amount of an assurance on his life, on the written security of himself and two satisfactory sureties for repayment.

**Loans to
Assured
Members.**

(2) The amount so advanced, with all interest thereon, may be deducted from the sum assured, without prejudice in the meantime to the operation of the security.

46. A registered Society may, out of any separate loan fund to be formed by contributions or deposits of its members,

make loans to members on their personal security,
 Loans out with or without sureties, as may be provided by
 of separate the rules, subject to the following restrictions—
 Loan Fund.

(a) a loan shall not at any time be made out of money contributed for the other purposes of the Society :

(b) a member shall not be capable of holding any interest in the loan fund exceeding two hundred pounds :

(c) a Society shall not make any loan to a member on personal security beyond the amount fixed by the rules, or make any loan which, together with any money owing by a member to the Society, exceeds fifty pounds :

(d) a Society shall not hold at any one time on deposit from its members any money beyond the amount fixed by the rules, and the amount so fixed shall not exceed two-thirds of the total sums owing to the Society by the members who have borrowed from the Loan Fund.

47.—(1) A registered Society or Branch may (if the rules thereof so provide) hold, purchase, or take on lease in the

names of the Trustees of the Society or Branch
 Holding of any land, and may sell, exchange, mortgage,
 Land. lease or build upon that land (with power to

alter and pull down buildings and again rebuild), and a purchaser, assignee, mortgagee, or tenant shall not be bound to inquire as to the authority for any sale, exchange, mortgage, or lease by the Trustees, and the receipt of the Trustees shall be a discharge for all sums of money arising from or in connection with the sale, exchange, mortgage, or lease.

(2) A Branch of a registered Society need not for the purposes of this section be separately registered.

(3) Nothing in this section shall authorize a Benevolent Society to hold land exceeding one acre in extent.

52.—(1) A registered Society or Branch may pay to the account of the National Debt Commissioners at the Bank of

England or the Bank of Ireland, as the case
 Investments with the may require, any sum of money not less than
 National Debt fifty pounds upon a declaration of the Trustees
 Commissioners. of the Society or Branch, or any two of them,

that the money belongs exclusively to the Society or Branch.

(5) A Society or Branch so investing money with the Commissioners shall be entitled to a receipt entitling to interest at the following rates—

To a Friendly Society or Branch legally established before the twenty-eighth of July one thousand eight hundred and twenty-eight, which had invested funds with the Commissioners before the twenty-third of July one thousand eight hundred and fifty-five, a rate of interest in respect of any assurance made before the fifteenth of August, one thousand eight hundred and fifty of — — —	} Threepence per cen- tum per diem.
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To a Friendly Society or Branch legally established between the twenty-eighth of July one thousand eight hundred and twenty-eight and the fifteenth of August, one thousand eight hundred and fifty, which had invested funds with the Commissioners before the twenty-third of July one thousand eight hundred and fifty-five, a rate of interest in respect of any assurance made before the fifteenth of August one thousand eight hundred and fifty of —	} Twopence halfpenny per cen- tum per diem.
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To a Friendly Society or Branch legally established before the twenty-eighth of June one thousand eight hundred and eighty-eight, which had invested funds with the Commissioners before the first day of January, one thousand eight hundred and ninety-six, a rate of interest in respect of any assurance made on or before the said twenty-eighth day of June of	} Twopence per cen- tum per diem.
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To a Society or Branch in respect of any investment with the Commissioners, other than as hereinbefore in this Section mentioned, a rate of interest — — — — —	} Two pounds fifteen shil- lings per centum per annum.
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(6) A Society or Branch withdrawing money so invested with the Commissioners shall not be entitled to make any further deposit without their consent.

55.—(1) Every Officer of a registered Society or Branch having receipt or charge of money shall, at such times as by the rules of the Society or Branch he should render account, or upon demand made, or notice in writing given or left at his last or usual place of residence, give in his Account as may be required by the Society or Branch, or by the Trustees or Committee thereof, to be examined and allowed or disallowed by them, and shall, on the like demand or notice, pay over all sums of money and deliver all property in his hands or custody to such person as the Society or Branch, or the Committee or the Trustees, appoint.

Accounts of
Officers.

(2) In case of any neglect or refusal to deliver the Account, or to pay over the sums of money, or to deliver the property in manner aforesaid, the Trustees or authorized Officers of the Society or Branch may sue upon the bond or security before mentioned, or may apply to the County Court or to a Court of Summary Jurisdiction, and the order of either such Court shall be final and conclusive.

88. If any person wilfully makes, orders, or allows to be made, any entry, erasure in, or omission from a Balance Sheet of a Registered Society or Branch, or a return or document required to be sent, produced, or delivered for the purposes of this Act, with intent to falsify the same or to evade any of the provisions of this Act, he shall be liable to a fine not exceeding fifty pounds.

Fine for
falsification.

THE FIRST SCHEDULE

MATTERS TO BE PROVIDED FOR BY THE RULES OF SOCIETIES REGISTERED UNDER THIS ACT

1. The name and place of office of the Society.
2. The whole of the objects for which the Society is to be established, the purposes for which the funds thereof shall be applicable, the terms of admission of members, the conditions under which any member may become entitled to any benefit assured thereby, and the fines and forfeitures to be imposed on any member, and the consequences of nonpayment of any subscription or fine.

3. The mode of holding meetings and right of voting, and the manner of making, altering, or rescinding rules.

4. The appointment and removal of a Committee of Management (by whatever name) of a Treasurer and other Officers, and of Trustees, and in the case of a Society with Branches, the composition and powers of the central body, and the conditions under which a Branch may secede from the Society.

5. The investment of the Funds, the keeping of the Accounts, and the Audit of the same once a year at least.

6. Annual Returns to the Registrar of the Receipts, Funds, Effects, and Expenditure, and Numbers of Members, of the Society.

7. The inspection of the Books of the Society by every person having an interest in the Funds of the Society.

8. The manner in which disputes shall be settled.

9. In case of dividing Societies, a provision for meeting all claims upon the Society existing at the time of division before any such division takes place.

And also in the case of Friendly and Cattle Insurance Societies—

10. The keeping separate Accounts of all moneys received or paid on account of every particular fund or benefit assured for which a separate table of contributions payable shall have been adopted, and the keeping separate account of the expenses of Management, and of all Contributions on account thereof.

11. (Except as to Cattle Insurance Societies) a Valuation once at least in every five years of the Assets and Liabilities of the Society, including the estimated risks and contributions.

THE SOCIETIES' BORROWING POWERS ACT, 1898

(61 & 62 Vict., c. 15.)

[25th July, 1898.]

1. A Society may by rule provide that it may receive
Provision for deposits and borrow money at interest from its
Borrowing. members, or from other persons, and upon the
 registry of such rule the same shall be valid.

2. The expression "Society" in this Act means a specially authorized Society registered, or seeking registration under the Friendly Societies Act, 1896, 59 & 60 Vict., c. 25, having for its object the creation of funds to be lent out to the members of the Society or for their benefit, and having in its rules provisions—

(a) that no part of its funds shall be divided by way of profit, bonus, dividend, or otherwise among its members ;

(b) that all money lent to members shall be applied to such purpose as the Society or its Committee of Management may approve.

THE COLLECTING SOCIETIES AND INDUSTRIAL ASSURANCE COMPANIES ACT, 1896

(59 & '60 Vict., c. 26.)

[7th August, 1896.]

1. This Act shall apply to every such—

(a) Friendly Society or Branch, whether registered or unregistered (in this Act referred to as a Collecting Society) ; and

(b) Person or body of persons, whether corporate or unincorporate, granting Assurances on any one life for a less sum than twenty pounds (in this Act referred to as an Industrial Assurance Company),

as receives contributions or premiums by means of collectors at a greater distance than ten miles from the registered office or principal place of business of the Society or Company, and, in the case of an Industrial Assurance Company, at less periodical intervals than two months :

Provided that nothing in this Act shall, except as expressly provided thereby, apply to any assurance with an Industrial Assurance Company the premiums in respect of which are receivable at greater periodical intervals than two months.

5.—(1) At least one general meeting of every Collecting Society and Industrial Assurance Company shall be held in every year.

(2) Except where the day, hour, and place of an annual or other periodical meeting is fixed by the rules, notice of every General Meeting shall either be given by the Society or Company to the members by advertisement to be published at least twice in two or more of the newspapers in general circulation in every country where the Society or Company carries on business, or be served upon every member.

6.—(1) A copy of every Balance Sheet of a Collecting Society shall, during the seven days next preceding the meeting at which the Balance Sheet is to be presented, be kept open by the Society for inspection at every office at which the business of the Society is carried on, and shall be delivered or sent by post to every member on demand.

Balance Sheets
and Annual
Returns.

(2) The Annual Returns required to be sent to the Registrar under the Friendly Societies Act, 1896, shall, in the case of a Collecting Society, be certified by some person not an officer of the Society (otherwise than an Auditor thereof) carrying on publicly the business of an Accountant, and if not so certified shall be deemed not to have been made.

15. If any person wilfully makes, orders, or allows to be made any entry, erasure in, or omission from a contribution or collecting book, with intent to falsify that book, or to evade any of the provisions of this Act, he shall be liable to a fine not exceeding fifty pounds recoverable at the suit of the Chief or any Assistant Registrar, or of any person aggrieved.

Fine for
falsification.

THE INDUSTRIAL AND PROVIDENT SOCIETIES ACT, 1893 (56 & 57 Vict., c. 39.)

[12th September, 1893.]

2. This Act shall come into operation on the first day of January next after the passing thereof, and shall extend to Great Britain and Ireland and the Channel Islands.

Extent of Act.

3. Every incorporated Society now existing which has

been registered or certified under any Act relating to Industrial and Provident Societies shall be deemed to be a Society registered under this Act, and its rules shall, so far as the same are not contrary to any express provision of this Act, continue in force until altered or rescinded.

Existing Societies.

10.—(1) The rules of a Society registered under this Act shall contain provisions in respect of the several matters mentioned in the second Schedule to this Act.

Rules and Amendments.

(2) The Auditors shall have access to all the books, deeds, documents, and Accounts of the Society, and shall examine the Balance Sheets showing the receipts and expenditure, funds and effects of the Society, and verify the same with the books, deeds, documents, Accounts and vouchers relating thereto, and shall either sign the same as found by them to be correct, duly vouched, and in accordance with law, or specially report to the Society in what respects they find them incorrect, unvouched, or not in accordance with law.

Audit.

14.—(1) Every registered Society shall once in every year, not later than the thirty-first day of March, send to the Registrar an Annual Return of the receipts and expenditure, funds and effects of the Society as audited.

Annual Returns.

(2) The Annual Return—

- (a) shall be signed by the Auditor or Auditors; and
- (b) shall show separately the expenditure in respect of the several objects of the Society; and
- (d) shall state whether the audit has been conducted by a public Auditor appointed as by this Act is provided, and by whom.

For (c) see The Industrial and Provident Societies' Amendment Act, 1913, Sec. 3.

15. Every registered Society shall supply gratuitously to every member or person interested in the funds of the Society, on his application, a copy of the last Annual Return of the Society for the time being.

Supply Copies of Annual Returns.

16. Every registered Society shall keep a copy of the last Balance Sheet for the time being, together with the Report of the Auditors, always hung up in a conspicuous place at the registered office of the Society.

Copy of last
Balance Sheet.

Conditions
of Banking
by Societies.

19.—(1) No registered Society which has any withdrawable share capital shall carry on the business of banking.

(2) Every registered Society which carries on the business of banking shall on the first Mondays in February and August in each year make out and keep conspicuously hung up in its registered office, and every other office or place of business belonging to it where the business of banking is carried on, a statement in the form in the Third Schedule, or as near thereto as the circumstances admit.

(3) The taking deposits of not more than ten shillings in any one payment, nor more than twenty pounds for any one depositor, payable on not less than two clear days' notice, shall not be included in the business of banking within the meaning of this Act ; but no Society which takes such deposits shall make any payment of withdrawable capital while any claim due on account of any such deposit is unsatisfied.

36. A registered Society may (if its rules do not direct otherwise) hold, purchase, or take on lease in its own name any land, and may sell, exchange, mortgage, lease, or build upon the same, or grant bonds and dispositions on security or other heritable securities over the same (with power to alter and pull down buildings and again rebuild).

Holding of
Land.

Debentures issued by an Industrial Society are invalid as regards chattels unless registered as a Bill of Sale.

The exemption from registration contained in Section 17 of the Bills of Sale Act, 1882, does not apply to an Industrial Society. Such a Society is not an "Incorporated Company" within the meaning of the section.—*In re Coal Co-operative Society; Great Northern Railway Co. v. Same*, II. Manson 621.

38.—(1) A registered Society may invest any part of its capital in or upon any security authorized by its rules, and also, if the rules do not direct otherwise—

Investments
by Societies.

(a) in or upon any security in which Trustees are for the time being authorized by law to invest ; and

(b) in or upon any mortgage, bond, debenture, debenture stock, corporation stock, annuity, rentcharge, rent, or other security (not being securities payable to bearer) authorized by or under any Act of Parliament passed or to be passed of any Local Authority as defined by Section 38 & 39 Vict., c. 83. thirty-four of the Local Loans Acts, 1875 ; and

(c) in the shares or on the security of any other Society registered or deemed to be registered under this Act, or under the Building Societies Acts, or of any Company registered under the Companies Acts or incorporated by Act of Parliament or by Charter, provided that no such investment be made in the shares of any Society or Company other than one with limited liability.

(a) The Securities in which Trustees are authorized by law to invest will be found in the Trustee Acts, Chapter IV.

(2) A Society so investing shall be deemed to be a person within the meaning of the Companies Acts, and of the Building Societies Acts.

(3) Any investments made before the passing of this Act, which would have been valid if this Act had then been in force, are hereby ratified and confirmed.

39. A Society (not being one chargeable with income tax in pursuance of this Act) may invest its capital and funds, or any part thereof to any amount, in any Savings Bank certified under the Trustee Savings Banks Act, 1863, or in a Post Office Savings Bank.

Power to invest in Savings Banks.
26 & 27 Vict., c. 87.

40. The rules of a registered Society may provide for advances of money to members on the security of real or personal property, or in the case of a Society registered to carry on banking business in any manner customary in the conduct of such business.

Advances to Members.

50.—(1) Upon the application of one-tenth of the whole number of members of a registered Society, or of one hundred

members in the case of a Society exceeding one thousand members, the Chief Registrar, or, in the case of Societies registered and doing business exclusively in Scotland or Ireland, the Assistant Registrar for Scotland or Ireland respectively, but with the consent of the Treasury in every case, may—

**Power to
appoint
Inspectors.**

registered and doing business exclusively in Scotland or Ireland, the Assistant Registrar for Scotland or Ireland respectively, but with

the consent of the Treasury in every case, may—

(a) appoint an Inspector or Inspectors to examine into and report on the affairs of such Society.

(5) An Inspector appointed under this section may require the production of all or any of the Books, Accounts, Securities, and Documents of the Society, and may examine on oath its Officers, members, agents, and servants in relation to its business, and may administer an oath accordingly.

The Auditor is not an Officer under this section, as in Clause 79 the term “Officer” is defined as extending “to any Treasurer, Secretary, member of the Committee, Manager, or servant, other than a servant appointed by the Committee of a Society.”

65. If any person wilfully makes, orders, or allows to be made any entry or erasure in, or omission from, any Balance Sheet of a registered Society, or any contribution or collecting book, or any return or document required to be sent, produced, or delivered for the purposes of this Act, with intent to falsify the same, or to evade any of the provisions of this Act, he shall be liable to a fine not exceeding fifty pounds.

**Penalty for
falsification.**

tion or collecting book, or any return or document required to be sent, produced, or delivered

for the purposes of this Act, with intent to falsify the same, or to evade any of the provisions of this Act, he shall be liable to a fine not exceeding fifty pounds.

72. The Treasury may appoint Public Auditors for the purposes of this Act, and may determine the rates of remuneration to be paid by registered Societies for the services of such Auditors.

Public Auditors.

73.—(1) The Treasury may determine a scale of fees to be paid for matters to be transacted or for the inspection of documents under this Act.

Fees.

75. Every document purporting to be signed by the Chief or any Assistant Registrar, or any Inspector or Public Auditor under this Act, shall, in the absence of any evidence to the contrary, be received in evidence without proof of the signature.

**Evidence of
Documents.**

under this Act, shall, in the absence of any evidence to the contrary, be received in evidence

without proof of the signature.

77. With respect to the Channel Islands this Act shall be varied as follows—
 Application of Act to Channel Islands. (2) As respects the Bailiwick of the Island of Guernsey—

(c) All Industrial and Provident Societies within the Bailiwick shall be authorized to invest any part of their funds in the States Bonds either of Guernsey or Alderney.

The omission with regard to authority for similar investment in the Island of Jersey was made good by the Industrial and Provident Societies Act, 1894, Section 3, *see post*.

SCHEDULE II

MATTERS TO BE PROVIDED FOR BY THE RULES OF SOCIETIES REGISTERED UNDER THIS ACT

4. The appointment and removal of a Committee of Management, by whatever name, of Managers or other Officers, and their respective powers and remuneration.

6. Determination whether the Society may contract loans or receive money on deposit subject to the provisions of this Act from members or others ; and, if so, under what conditions, on what security, and to what limits of amount.

8. Provision for the audit of Accounts and for the appointment of Auditors or a Public Auditor.

9. Determination whether and how members may withdraw from the Society.

10. Mode of application of profits.

12. Determination whether, and by what authority, and in what manner, any part of the capital may be invested.

THE INDUSTRIAL AND PROVIDENT SOCIETIES ACT, 1894 (57 Vict., c. 8.)

[18th June, 1894.]

3. The following shall be added to Sub-section (1) of Section seventy-seven of the last-named Act as sub-head (j) : All Industrial and Provident Societies within the said Island shall be authorized to invest any part of their funds in the “ Rentes

Powers of Investment.

Publiques," or in the States Bonds of the said Island, if they think fit.

The heading to 77 (*i*) referred to is "As respects the Island of Jersey, the following provisions shall have effect."

THE INDUSTRIAL AND PROVIDENT SOCIETIES AMENDMENT ACT, 1913

(3 & 4 George V, c. 31.)

[15th August, 1913.]

1. A Society consisting solely of two or more Registered Societies may, notwithstanding anything contained in Section five of the Industrial and Provident Societies Act, 1893 (in this Act referred to as the principal Act), be registered if the application to register the Society is signed by two members of the committee and the secretary of each of the constituent Societies, and is accompanied by two printed copies of the rules of each such Society.

Registration
of society
consisting of
two or more
other societies.
56 & 57 Vict.,
c. 39.

2.—(1) Every registered Society shall once in every year submit its Accounts for audit to one or more of the Public Auditors appointed under the provisions of the principal Act.

Audit of
Accounts.

(2) An Auditor shall not hold any other office in connection with the Society.

3.—(1) For paragraph (*c*) of Sub-section (2) of Section fourteen of the principal Act (which relates to the date to which annual returns are to be made up) the following paragraph shall be substituted—

Annual return.

" (*c*) shall be made up from the date of its registration or last annual return to that of its last published balance sheet, unless the last-mentioned date is more than four months before or more than one month after the thirty-first day of December in which case it shall be made up to the said thirty-first day of December inclusive; and "

(2) A registered Society shall, together with the annual

return, send to the Registrar a copy of the report of the Auditors and a copy of each balance sheet made during the period included in the return.

4. A registered Society shall, once at least in every three years, make out and send to the Registrar, together with the annual return for the year, a special return signed by the Auditor or Auditors showing the holding of each person in the Society (whether in shares or loans) at the date to which the said annual return is made out: Provided that, where such persons are in the list of members kept by the Society distinguished by numbers, it shall be sufficient if they are distinguished in the special return by such numbers, and in that case it shall not be necessary to specify their names.

Triennial
returns of
shareholders.

THE TRUSTEE SAVINGS BANKS ACT, 1863
(26 & 27 Vict., c. 87.)

[28th July, 1863.]

5. Every Savings Bank established or to be established under the provisions of the said hereby repealed Acts or this Act shall be certified under the provisions of this Act by the title of "Savings Bank certified under the Act of 1863"; and if any other Bank, Association, or Company, or any other person, shall use or adopt such title as their or his designation, or in carrying on business, the members of every such Association or Company, or any of them, or any such person respectively, shall be guilty of a misdemeanour, and on conviction thereof shall be punishable accordingly.

As to Title of
Savings Banks
certified under
this Act.

Penalty on using
or adopting
Titles of
other Banks.

6. No Savings Bank, subject to the proviso hereinafter contained with respect to the Branch Offices of Local Receivers of any Savings Bank, shall have the benefit of this Act unless in the rules and regulations for the management thereof it shall be expressly provided—

(1) That no person or persons, being Treasurer, Trustee, or Manager of such Savings Bank, or having any control in the management thereof, shall derive any benefit from any deposit made in such Savings Bank, save only and except such salaries and allowances or other necessary expenses as shall according to such rules and regulations be provided for the charges of managing such Savings Bank, and for remuneration to Officers employed in the management thereof, exclusive of the Treasurer or Treasurers, Trustee or Trustees, Manager or Managers, or other persons having direction in the management of such Savings

No Savings Bank, subject to proviso herein-after contained with respect to Branch Offices, etc., shall have benefit of this Act unless in Rules, etc., it shall be expressly provided as herein specified.

Bank, who shall not directly or indirectly have any salary, allowance, profit, or benefit whatsoever therefrom beyond their actual expenses for the purposes of such Savings Bank.

(2) That not less than two persons, being either Trustees, Managers, or paid Officers appointed for that specific purpose, and where two only, except in the case of Savings Banks which are open for more than six hours in every week, one such person to be a Trustee or Manager, be present on all occasions of public business, and be parties to every transaction of deposit and repayment, so as to form at least a double check on every such transaction with Depositors.

(3) That the Depositor's pass book shall be compared with the ledger on every transaction of repayment, and on its first production at the bank after each twentieth day of *November*.

(4) That every Depositor in a Savings Bank established under this Act shall once at least in every year cause his deposit book to be produced at the office of the said Savings Bank for the purpose of being examined.

(5) That no money be received from or paid to Depositors except at the Office or Branch Offices where the business of the Savings Bank is carried on under the authority of the Board of Managers, and during the usual hours for public business.

(6) That a Public Accountant or one or more Auditors be appointed by the Trustees and Managers, but not out of their own body, to examine the books of the bank, and to report in writing to the Board or Committee of Management the result of such Audit, not less than once in every half-year, also to examine an extracted list of the Depositors' balances made up every year to the twentieth day of *November*, and to certify as to the correct amount of the liabilities and assets of the bank :

(7) That a book containing such extracted list of every Depositor's balance, omitting the name, but giving the distinctive number and separate amount of each, and showing the aggregate number and amount of the whole, checked and certified by such Public Accountant or Auditors, be open at any time during the hours of public business for the inspection of every Depositor as respects his own account, to examine his own deposit book therewith, and the general results of the same :

(8) That the Trustees and Managers, or Committee of Management, shall hold meetings once at least in every half-year, and shall keep minutes of their proceedings in a separate book provided for that purpose :

(9) Provided that where Savings Banks are established with agents or local receivers elsewhere than at the head office, the rules shall provide for the due receipt of and accounting for all moneys by such agents or local receivers on account of such Savings Banks respectively, and also for the presence of a second party in every transaction when money is paid or received, and also for the periodical examination of the Depositors' books with the ledger once at least in every year.

7. The Trustees and Managers of every Savings Bank shall transmit weekly returns to the Commissioners for the reduction of the National Debt, in such form and giving such particulars as the said Commissioners may direct, showing the amounts of the week's transactions of such Savings

Proviso with respect to Branch Offices and Local Receivers of Banks.

Weekly Returns to be made by Savings Banks to the Commissioners.

Bank, and the amount of the cash balances remaining in the hands of the Treasurer, or any other person on account of such Savings Bank.

10. All moneys, goods, chattels, and effects whatever, and all securities for money, or other obligatory instruments and evidences or muniments, and all other effects whatever, and all rights or claims belonging to or had by such Savings Bank, shall be vested in the Trustee or Trustees of such Savings Bank for the time being, for the use and benefit of such Savings Bank and the respective Depositors therein, their respective executors or administrators, according to their respective claims and interests, and after the death or removal of any Trustee or Trustees shall vest in the succeeding Trustee or Trustees for the same estate and interest as the former Trustee or Trustees had therein, and subject to the same trusts, without any assignment or conveyance whatever.

15. The several sums of money belonging to any Savings Bank which the Trustees of such Savings Bank respectively are authorized to invest under this Act or under any rules or regulations of any such Savings Banks shall, except as hereinafter is excepted, be paid into and invested in the Bank of *England* or the Bank of *Ireland* as the case may require, in the names of the Commissioners for the Reduction of the National Debt, according to the provisions of this Act enabling such Trustees to make investments in the names of the said Commissioners, and no such sum or sums shall be paid or laid out by the Trustees of such Savings Bank in any other manner or upon any other security whatever, except as aforesaid, and except such sums of money as from time to time shall necessarily remain in the hands of the Treasurer or Treasurers of such Savings Bank to answer the exigencies thereof: Provided always, that nothing herein contained shall restrain or prevent any Depositor, or any Trustee or Trustees acting on behalf of any Depositor or Depositors of any Friendly Society, or any Charitable

Effects of
Savings Bank
vested in
Trustees for
the time being.

Trustees of
Savings Banks
shall invest all
Money in the
Banks of
England or
Ireland and
not in any
other Security.

or Provident Institution or Society, or Penny Savings Bank, from withdrawing from any such Savings Bank any sum or sums of money which shall have been deposited by such Depositor, Friendly Society, Charitable or Provident Institution or Society, or Penny Savings Bank, and investing the same in any other securities :

Not to prevent Depositors withdrawing their Money from Savings Banks for investment in other Securities.

Trustees empowered to pay into the Banks of England or Ireland any sum not less than £50 to the account of the Commissioners for the Reduction of the National Debt.

Provided always, that the Trustees of any Savings Bank already established, or which shall take the benefit of this Act in manner hereinbefore provided, shall be and they are hereby empowered to pay into the Bank of *England or Ireland* (as the case may be) any sum or sums of money, not being less than fifty pounds, to the account of the Commissioners for the Reduction of the National Debt, upon the declaration of the Trustees of such Savings Bank, or any two or more of them, that such moneys belong exclusively to the Savings Bank for which such payment is intended to be made, whether such moneys shall have been deposited therein before the passing of this Act or thereafter shall be deposited therein.

16. Nothing in this Act contained shall extend to prevent the Trustees of any Savings Bank already established or to be established receiving any sum or sums of money from any Depositor for any purpose except to be paid into the Bank to the account of the Commissioners for Reduction of the National Debt, and it shall be lawful for such Trustees to apply any such sum or sums of money in any other manner for the benefit of the several Depositors according to the rules and regulations of such Savings Banks respectively, anything in the said hereby repealed Acts or in this Act contained to the contrary notwithstanding.

Not to prevent Trustees from receiving Money to be applied in any other manner.

17. In cases where any Savings Banks have been or shall be established in any town or place, and other smaller Banks have been or shall be established in the neighbourhood of such town or place as Branch Banks thereof, and such

Branch Banks by their Treasurers have paid or shall pay any sums into the Bank in any such town or place as a Central Bank, it shall and may be lawful for the said Trustees of any such Central Bank, or any two of them, to pay into the Bank of *England* or *Ireland* in manner prescribed by this Act, along with the moneys belonging to such Central Bank, any sum or sums of money belonging to and on account of any such Branch Bank: Provided always, that the Treasurer of such Branch Banks shall certify to the Treasurer of such Central Bank that the amount contributed by any one Depositor in any such Branch Bank in any one year does not exceed the limit of deposits authorized by this Act.

22. All interest which shall become due and payable upon any sum of money mentioned in any such receipt upon the twentieth day of *November* and the twentieth day of *May* in every year next after the date of any such receipt shall be from time to time calculated and computed by the Officer of the said Commissioners, and shall in each and every year be placed to the credit of the Savings Bank on whose account any such sum of money was paid within six weeks from such twentieth day of *November* and twentieth day of *May* respectively, and shall be carried to and written on the account of such Savings Bank, and shall become principal, and shall from thenceforth carry interest as principal money paid into the said Bank of *England* or *Ireland*, as the case may be, on the account of such Savings Bank; and a receipt according to such form as the said Commissioners shall approve shall be signed by the Officer of the said Commissioners, and shall be issuable by the said Officer half-yearly within sixty days from and after such twentieth day of *November* and twentieth day of *May* respectively (and such receipts shall bear date the twenty-first day of *November* and twenty-first day of *May* respectively) for the amount of such interest so credited and made principal as aforesaid as if the amount thereof had been a payment made by the Trustees

Central Banks
may invest
the Money of
Branch Banks.

Interest due
on Money
mentioned in
receipt to be
calculated half-
yearly up to
20th November
and 20th May
and carried to
account of
Savings Bank
as additional
Principal.

of such Savings Bank to the account of the said Commissioners: Provided always, that no interest shall be computed or calculated on any fractional part of a pound of the half-yearly balance standing in the books of the said Commissioners on account of any Savings Bank on any twentieth day of *November* or twentieth day of *May* respectively.

23. It shall be lawful for the Trustees and Managers of any such Savings Bank, if they shall so think fit, to direct that all interest which shall be payable to the Depositors in such Savings Bank shall yearly, or twice in each and every year, be calculated and computed by the Trustees of such Savings Bank, or such person or persons as they shall appoint, and shall be carried to the credit of such Depositors respectively, and shall become principal, and shall from thenceforth carry interest in all respects as other principal money deposited in the said Banks, or as if the said sum of interest so credited to the said Depositors respectively had actually been paid to the said Depositors and by them repaid to the said Trustees and Managers, any law, statute, or usage to the contrary notwithstanding: Provided always, that from and after the twentieth day of *November*, one thousand eight hundred and sixty three, the interest payable to Depositors by the Trustees and Managers of any Savings Banks shall not exceed the rate of three pounds and tenpence *per centum per annum*.

39. It shall not be lawful for the Trustees of any Savings Bank to receive from any one present or future Depositor, within any one year ending on the twentieth day of *November* (whether any sum or sums of money had been previously withdrawn or not), any sum or sums exceeding in the whole thirty pounds, exclusive of compound interest: Provided always, that, except in the cases hereinafter provided, whenever the sum or sums standing in the name of any

No Interest to be allowed on any fractional part of a pound.

Interest arising to Depositors may be calculated yearly or twice a year and carried to their credit as Principal.

Interest to Depositors not to exceed £3 os. 10d. per cent per annum.

Trustees not to receive from any one Depositor more than £30 in any one year, nor more than £150 in the whole. When Deposit and Interest amount to £200 Interest to cease,

Depositor shall amount in the whole to two hundred pounds, principal and interest included, thenceforth no interest shall be payable on any such deposit so long as it shall continue to amount to the said sum of two hundred pounds.

51. The Trustees of each Savings Bank in *Ireland* shall, as soon as conveniently may be after the passing of this Act, and from time to time in case of a vacancy, **Appointment of Auditors in Ireland.** appoint an Auditor or Auditors to audit the Accounts of the said Savings Bank, as well as to examine and inspect the books of the several Depositors, and the said Trustees shall immediately after such appointment transmit the signature, name, and address of the said Auditor or Auditors to the Commissioners for the Reduction of the National Debt ; and the Trustees of every such Savings Bank in *Ireland* shall cause the annual and other Statements required to be transmitted under this Act to be certified and verified by the Auditor or Auditors appointed by the said Trustees, in addition to the attestation by Trustees and Managers, as also required by this Act, and shall also cause a certificate from the said Auditor or Auditors, as to the result of his or their examination of such of the Depositors' books as may have been produced to him or them for examination to be transmitted with the said Annual Statement to the said Commissioners : Provided always, that it shall be lawful for the Trustees of any such Savings Banks in *Ireland* to agree with the Trustees of any other such Savings Bank or Banks in *Ireland* as to the appointment of a common Auditor or Auditors, and the Auditor or Auditors so appointed for all the said Banks shall be deemed and taken, as soon as the signature, name, and address shall have been transmitted by each such Bank to the said Commissioners, to be the Auditor or Auditors of each such Bank.

52. Every Depositor in every Savings Bank in *Ireland* on his first deposit shall be furnished with a deposit book, in which shall be printed at length a copy of the certified rules of the Savings Bank in which he shall make such deposit ; and a duplicate copy of the certified rules, and of every alteration and amendment thereof, and

a duplicate copy of every Annual Statement or Account required by and furnished to the said Commissioners, signed by two Trustees or Managers of any such Savings Bank, shall be from time to time exhibited in the office of such Savings Bank, and shall be open to the inspection of every Depositor or person intending to be such.

53. The rules of every Savings Bank in *Ireland* shall specify a number of days, not less than two in every year, ending on the twentieth of *November*, in which the book of each Depositor shall be produced at the office of the said Savings Bank for the purpose of being inspected, examined, and verified with the books of the Savings Bank by the Auditor or Auditors.

55. For the more effectual ascertaining from time to time the actual and progressive state of the several Savings Banks enrolled under the provisions of this Act, the Trustees and Managers of every such Savings Bank shall annually cause a general Statement of the funds of such Savings Bank invested in the Bank of *England* or the Bank of *Ireland* in the names of the Commissioners for the Reduction of the National Debt to be prepared up to the twentieth day of *November* in each year, showing the balance or principal sum due to all the Depositors collectively in such Savings Bank, and a Statement of the expenses incurred, and stating in whose hands such balance shall then be remaining ; and every such Annual Statement shall be attested by two Managers or two Trustees, or by one Manager and one Trustee, of such Savings Bank, and every such Annual Statement shall be countersigned by the Secretary or Actuary of such Savings Bank, and all such Annual Statements shall be transmitted to the office of the said Commissioners for the Reduction of the National Debt in *London* or *Dublin* (as the case may be) within nine weeks after the twentieth day of *November* in each year.

59. The Trustees and Managers of every such Savings Bank shall cause a duplicate of every such Annual Statement, accompanied by a list of the Trustees and Managers of such institution for the time being, attested and countersigned as aforesaid, to be publicly affixed and exhibited in some conspicuous part of the office or place where the deposits of such Savings Bank are usually received, for the information of all parties making deposits therein; and every such duplicate shall from time to time remain so affixed and exhibited until the ensuing Annual Statement shall in like manner be affixed and exhibited as aforesaid; and every Depositor shall be entitled to receive from the said Savings Bank a printed copy of such Annual Statement on payment of one penny.

62. For the purpose of rendering the Accounts of the several Savings Banks in *Great Britain* and *Ireland* uniform and correspondent with the Accounts of the Commissioners for the Reduction of the National Debt the interest payable to the Depositors in such Savings Banks in *Great Britain* and *Ireland* shall, from and after the twentieth day of *November*, one thousand eight hundred and sixty-three, be computed half-yearly to the twentieth day of *May* and the twentieth day of *November*, or yearly to the twentieth day of *November* in each year, as the case may be, and to no other periods.

A duplicate
of such
Account shall
be affixed in
the Office of
the Savings
Bank.

Savings Banks
shall compute
Interest on
20th May and
20th November
half-yearly or
yearly.

THE SAVINGS BANKS ACT, 1891

(54 & 55 Vict., c. 21.)

[3rd July, 1891.]

Establishment
of Inspection
Committee.

2.—(1) There shall be established an Inspection Committee of Trustee Savings Banks.

3.—(1) The Inspection Committee may appoint persons to inspect the Books and Accounts of Trustee Savings Banks, and to examine and ascertain and report to the Committee

from time to time, with respect to each Bank, whether the Bank has complied with the requirements of the Acts and rules relating to the Bank as to the security to be taken from officers, the Accounts of the Bank and the conduct of its business, and whether any portion of the expenditure is excessive or unnecessary; and every Trustee Savings Bank shall give all due facilities for enabling any such inspection or examination to be made.

**Powers and
duties of
Inspection
Committee.**

(4) The Trustees of every Trustee Savings Bank shall, on the requisition of the Committee, supply the Committee with a copy of the pass book in use in the Bank, of the Annual General Statement of the Accounts of the Bank, and of the rules of the Bank, and of any amendments thereof.

(5) If in the opinion of the Committee the rules of any such Bank are insufficient for the purpose of maintaining an efficient audit, the Bank shall with all convenient speed make such additional rules as may, in the opinion of the Committee, be required for the purpose.

(6) If the Bank do not, within a time specified by the Committee from the date of being required to make any such rules, comply with the requirement, the Committee may make such rules, and shall submit the rules so made to the Registrar of Friendly Societies, to be certified by him; and, when so certified, they shall be binding on the Trustees.

8. The Annual Statement required by Section fifty-five of the Trustee Savings Banks Act, 1863, to be made by the Trustees and Managers of every Trustee Savings Bank shall be in such form, and contain, or be accompanied by, such particulars as the National Debt Commissioners direct. A similar Statement shall be sent to the Inspection Committee each year at the same time.

**Form of Annual
Statement by
Trustees of
Trustee
Savings Banks.**

10. The power of a Trustee Savings Bank to make investments (hereinafter referred to as special investments) in pursuance of Section sixteen of the Trustee Savings Banks Act, 1863, shall be subject to the following restrictions, namely—

**Provisions
as to special
Investments.**

(a) An investment shall not be made after the commencement of this Act on behalf of any person unless he is at the time of making the investment a Depositor in the Bank to the extent of not less than fifty pounds : Provided that nothing in this sub-section shall prevent the continuance of special investments in behalf of any person who is before the passing of this Act a Depositor under Section sixteen of the Trustee Savings Banks Act, 1863 ;

(b) The total amount to be invested after the commencement of this Act on behalf of any one Depositor shall not exceed five hundred pounds in the aggregate ;

(c) The money received for investment after the commencement of this Act shall not be invested in any manner not for the time being authorized by law in the case of investment by Trustees, and shall not be invested on mortgage of land or any interest in land ;

(d) The Accounts of the Bank shall be kept so as to distinguish between the receipts and expenditure on account of special investments and the receipts and expenditure on account of the general business of the Bank ;

(e) The assets of the Bank in respect of ordinary deposits shall not be chargeable with any part of the expenditure on account of special investments, and shall not be liable for any loss or deficiency in respect of special investments ;

(g) The Annual Statement required by Section fifty-five of the Trustee Savings Banks Act, 1863, shall contain, or be accompanied by, such particulars with respect to the special investments of the Bank as the National Debt Commissioners direct ;

(h) The Rules of the Bank shall provide to the satisfaction of the Inspection Committee for the audit, examination, and publication of the investment accounts, for the safe custody of the securities held by the Bank on account of special investments, and the security to be given by Officers of the Bank in respect of the amount received on such account ;

(i) The power to make special investments shall not be exercised by any Bank unless the Bank has exercised the

power before the first day of June, one thousand eight hundred and ninety-one.

16. In this Act—

Definitions. The expression “Trustee Savings Bank” means a Bank certified under the Trustee Savings Banks Act, 1863.

The expression “Savings Bank” (without the word Trustee) includes both a Trustee Savings Bank and a Post Office Savings Bank.

The expression “Friendly Society” means a Friendly Society legally registered in the manner required by the Acts for the time being in force relating to Friendly Societies, and includes a registered branch.

THE SAVINGS BANK ACT, 1920
(10 & 11 George V, c. 12.)

[20th May, 1920.]

PART I

SAVINGS BANKS

1.—(1) There shall, subject as hereinafter provided, be no limit on the amount which may be received by a savings bank authority from any person by way of deposit or on the amount of Government stock which may be credited by a savings bank authority to the account of any depositor, and all enactments imposing, or relating whether directly or indirectly to, any such limit shall cease to have effect :*

Provision as to limits on savings banks deposits and on investment in Government stock.

Provided that it shall be lawful for the Treasury at any time by order under this section to limit the amount which may be so received from any person whatsoever either in any one year or in the aggregate, or the amount of Government stock which may be so credited to any person whatsoever either in one year or in the aggregate.

(2) An order under this section—

(a) may fix different limits as respects different classes of persons :

(b) may provide that any limit fixed by the order shall

have effect subject to any exceptions or exclusions specified in the order :

(c) may contain special provisions with respect to depositors whose deposits at the date on which the order takes effect exceed the limit fixed by the order as regards deposits or in whose case the Government stock credited at that date exceeds the limit fixed by the order as regards Government stock :

(d) may contain such consequential and supplemental provisions as appear to the Treasury to be necessary for giving full effect to the order :

(e) may be revoked, extended or varied by a subsequent order :

(f) shall have effect as if enacted in this Act.

Provided that—

(i) the department shall require a company making application to them for their consent under this Act to give notice of the application in writing to the council of each county, borough, or urban or rural district within which any part of the undertaking or limits of supply of the company is situate, and of the manner in which and time within which representations may be made with respect to the application, and the department shall consider any representations which may be duly made ;

(ii) preference stock, whether redeemable or otherwise, shall not be issued under the authority of this Act to a greater extent than shall be sufficient to produce, including any premium which may be obtained on the sale thereof, an amount equal to the nominal amount of the stock authorized to be issued by the special Act or, as the case may be, the amount authorized to be raised by the special Act ; and

(iv) the provisions contained in the Schedule to this Act shall apply in respect of redeemable preference or debenture stock issued in pursuance of this Act ; and

(v) preference stock issued under the authority of this Act shall not affect any preference or priority as to the payment of dividends or capital enjoyed by any preference

stock existing at the date of such issue, except with the sanction of three-fourths of the votes of the holders of that stock present (personally or by proxy) at a meeting of those stockholders specially convened for the purpose ; and

(vi) debenture stock issued under the authority of this Act shall not affect any priority as to the payment of interest or capital enjoyed by any debenture stock existing at the date of that issue except with the sanction of three-fourths of the votes of the holders of such stock.

2.—(1) Section five of the National Debt (Supplemental) Act, 1888 (which makes provision as to the rate of interest to

be allowed in respect of money paid into the Bank of England or the Bank of Ireland by the trustees of trustee savings banks), shall have effect as though the words “ such rate not being less than two pounds fifteen shillings

per centum per annum and not exceeding two pounds seventeen shillings and sixpence per centum per annum as the Treasury may by order fix ” were therein substituted for the words “ the rate of two pounds fifteen shillings per centum per annum.”

(2) Any order made by the Treasury under this section may be varied from time to time as the Treasury think proper, and such rate as may be first fixed under this section shall be deemed to have been in operation as from the twentieth day of November, nineteen hundred and nineteen.

4.—(1) Paragraph (a) of subsection (1) of section three of the Savings Banks Act, 1887, shall have effect as though the

words “ not exceeding in the aggregate one hundred pounds ” were omitted therefrom, and paragraph (b) of the said subsection shall have effect as though for the words “ for the revocation of such nomination ” there were

therein substituted the words “ for the manner in which any such nomination may be revoked by the depositor, and for the circumstances in which it is to be treated as having ceased to be operative.”

(2) Paragraph (c) of subsection (1) of section three of the Savings Banks Act, 1887, shall cease to have effect.

5. Section three of the Savings Banks (Barrister) Act, 1876 (which gives power to charge fees on certificates, awards, etc., given or made by the Registrar of Friendly Societies), shall have effect as if the words “not exceeding in any case one pound” were omitted therefrom.

PART III

GENERAL.

9. This Act shall extend to the Channel Islands and the Isle of Man and the Royal Courts of the Channel Islands shall register the same.

THE TRUSTEE SAVINGS BANK ACT, 1918

(8 George V, c. 4.)

[18th April, 1918.]

1.—(1) Every Trustee Savings Bank which carries on the business of making special investments shall so far as respects that business be subject to the control of the National Debt Commissioners and shall comply with any directions which may from time to time be given by the Commissioners with respect to that business.

(2) Without prejudice to the general power of control hereinbefore given to the Commissioners, the following provisions shall have effect with respect to the special investments business of a Trustee Savings Bank.

(a) No money received for investment shall be invested, and no Securities held on account of special investments shall be sold, except with the approval of the Commissioners :

(b) No change shall be made in the rate of interest allowed to Depositors in respect of special investments except with the approval of the Commissioners :

(c) The amount to be expended by the Bank for expenses of management on account of the special investments business shall not exceed such an amount as may be allowed by the Commissioners.

(d) No money received for investment shall be invested except so as to become repayable not later than the expiration of one year, or, if the money is invested in Government Securities, three years, from the date of the investment, or so as to be repayable on six months' or some shorter notice :

(e) There shall be transmitted to the Commissioners, together with the statement required to be transmitted to ^{26 & 27 Vict.} them under section fifty-five of the ^{c. 87.} Trustee Savings Banks Act, 1863, a valuation of the Securities held by the Bank on account of special investments, and for the purpose of the valuation the value of those Securities shall be calculated according to the current market price at the date of the valuation, or, in the case of Securities for which there is at that date no current market price, shall be taken to be such an amount as the Commissioners shall fix, having regard to the date of repayment of, and to the rate of interest payable in respect of, the Securities.

2.—(1) For the purpose of providing for any deficiency which may arise in respect of special investments made by Trustee Savings Banks, there shall be established a guarantee fund under the control of the Commissioners.

Establishment
of guarantee
fund to meet
deficiencies on
special invest-
ments accounts.

(2) The guarantee fund shall consist of—

(a) The reserves both in respect of general business and of special investments of all Trustee Savings Banks which make special investments ; and

(b) Such part of the separate surplus fund as stands to the credit of closed Trustee Savings Banks ;

and for the purpose aforesaid the reserves of every such Trustee Savings Bank shall be at the disposal of the Commissioners, and the Bank shall comply with any directions given by the Commissioners with respect to those reserves for the purpose of giving effect to the provisions of this section.

(3) If on any valuation of the assets belonging to any Bank on account of special investments it appears that there is a deficiency, that deficiency shall, in the event of the Bank being closed or wound up, or discontinuing, with the consent

of the Commissioners, the business of making special investments, be a charge on and be made good out of the guarantee fund, as follows :—

(a) Recourse shall be had in the first instance to the amount standing to the credit of the guarantee fund in respect of the reserves of the Bank in question and, so far as that amount is insufficient for the purpose, to the amount standing to the credit of the guarantee fund in respect of the reserves of other banks and to the part of the separate surplus fund standing to the credit of the guarantee fund *pari passu* ; and

(b) As between the reserves of a Bank in connection with special investments and the reserves of a Bank in connection with its general business, recourse shall be had in the first instance to the reserves in connection with special investments, and as between the banks other than the Bank in connection with whose account the deficiency has arisen the amount falling to be charged on the reserves of those banks shall be allocated *pro rata* to those reserves according to their several amounts.

(4) So much of paragraph (e) of section ten of the Savings Banks Act, 1891, as enacts that the assets of a Bank in respect
 54 & 55 Vict. of ordinary deposits are not to be liable for any
 c. 21. loss or deficiency in respect of special investments shall cease to have effect so far as relates to such assets of the Bank as are reserves within the meaning of this Act.

3.—(1) The amount standing to the credit of a Trustee Savings Bank in the separate surplus fund which accrued
 before the commencement of the Savings
 Banks Act, 1880, shall, as from the twentieth
 day of November, nineteen hundred and seven-
 Interest on
 separate
 surplus fund.
 43 & 44 Vict.
 c. 36. teen, carry interest at the same rate and in
 the same manner as any other sums standing
 to the credit of the Bank.

(2) Section four of the Savings Bank Acts, 1891 (which provides for the expenses of the Inspection Committee), shall have effect as if the words “so much of the separate surplus fund which has accrued under section twenty-nine of the

Savings Banks Act, 1863, as stands to the credit of closed Trustee Savings Banks " were substituted for the words " the separate surplus fund which has accrued under section twenty-nine of the Savings Banks Act, 1863, and which does not carry interest to the trustees of savings banks."

4. In this Act—

The expression " Special Investments " means any investments made in pursuance of section sixteen of the Trustee Savings Banks Act, 1863, but does not include any investment so made if the Bank is not to be liable to repay to the Depositor in cash the money received from him and applied in making the investment :

The expression " Separate Surplus Fund " means the fund created pursuant to section twenty-nine of the Trustee Savings Banks Act, 1863 :

The expression " Commissioners " means the National Debt Commissioners :

The expression " Reserves " means as respects any Bank the whole of the assets of the Bank, less the amount necessary to discharge in full all liabilities to Depositors in the Bank and outstanding management expenses.

5. This Act shall extend to the Channel Islands and the Isle of Man.

Extension to
Channel
Islands and
the Isle of Man.

THE MUNICIPAL SAVINGS BANKS (WAR LOAN INVESTMENT) ACT, 1916

(6 & 7 George V, c. 47.)

[23rd August, 1917.]

1.—(1) For the purpose of facilitating the investment of savings in securities issued for the purposes of the present war it shall be lawful for any council to which this section applies, with the consent of the Treasury, after consultation with the Local Government Board, or in the case of Scotland with the Secretary for Scotland, to establish and maintain a Savings Bank, and to receive at that Bank

Power of
councils of
boroughs to
establish
savings banks.

deposits, and to guarantee the payment of interest on and the repayment of such deposits, and for that purpose to charge such rate or fund out of which any of the expenses of the council are payable as may be prescribed by regulations made under this section, subject, however, to the following conditions—

(a) The Bank shall not receive any deposits except from persons in the employment of some other person and made through their employers either by way of deductions from wages or otherwise, nor shall the Bank receive any deposit which makes the sum standing in the name of any depositor in the Bank exceed two hundred pounds ;

(b) The Bank shall not be carried on (otherwise than for the purpose of winding it up) after the expiration of three months from the termination of the present war ;

(c) All sums belonging to the Bank, except such as are required to meet current liabilities, shall be invested through the National Debt Commissioners in such of the following securities issued for the purposes of the present war as those Commissioners think fit, that is to say, either in Treasury Bills or in advances to the Treasury of sums which the Treasury may borrow for the purpose of raising any sum which they are authorized to issue out of the Consolidated Fund under any Consolidated Fund Act or Appropriation Act ;

(d) Interest shall be paid by the National Debt Commissioners to the Bank on the balance from time to time standing to the credit of the Bank at such rate as may from time to time be determined by the Treasury having regard to the interest earned on the sums so invested ;

(e) The accounts of the Bank shall be kept separate from all other accounts of the council, and shall be audited in such manner as may be prescribed by regulations made under this section, and no money paid into the Bank shall be used for any purpose of the council other than the Bank ;

(f) the rate of interest payable on deposits shall be subject to the approval of the Treasury.

CHAPTER IV

THE LAW RELATING TO AUDITORS AND ACCOUNTS OF PARTNERS, JUDICIAL TRUSTEES, EXECUTORS, UNIVERSITIES, ETC.

THE Partnership Act, 1890—The Limited Partnerships Act, 1907—The Judicial Trustees Act, 1896—The Public Trustee Act, 1906—Hinde Palmer's Act, 1869—The Apportionment Act, 1870—The Finance Act, 1894—The Finance Act, 1896—The Finance Act, 1914—The Finance Act, 1919—The Intestates' Estate Act, 1890—The Trustee Act, 1893—The War Loan (Trustees) Act, 1915—The Colonial Stock Act, 1900—The Universities and College Estates Act, 1858—The Universities and College Estates Amendment Act, 1880—The Universities and College Estates Act, 1898—The Universities of Oxford and Cambridge Act, 1877—The Universities and Colleges (Emergency Powers) Act, 1915—The Licensing (Consolidation) Act, 1910—The County Courts Act, 1888—The Sheriffs Act, 1887—The Port of London Act, 1908—The Territorial and Reserve Forces Act, 1907—The War Charities Act, 1916—The Larceny Act, 1861—The Larceny Act, 1916—The Falsification of Accounts Act, 1875.

THE PARTNERSHIP ACT, 1890

(53 & 54 Vict., c. 39.)

[14th August, 1890.]

17.—(1) A person who is admitted as a Partner into an existing firm does not thereby become liable to the creditors of the firm for anything done before he became a Partner.

Liabilities of
Incoming
and Outgoing
Partners.

(2) A Partner who retires from a firm does not thereby cease to be liable for partnership debts or obligations incurred before his retirement.

(3) A retiring Partner may be discharged from any existing liabilities by an agreement to that effect between himself and the members of the firm as newly constituted and the creditors, and this agreement may be either express or inferred as a fact from the course of dealing between the creditors and the firm as newly constituted.

20.—(1) All property and rights and interests in property originally brought into the partnership stock, or acquired, whether by purchase or otherwise, on account of the firm, or for the purposes and in the course of the partnership business, are called in this Act partnership property, and must be held and applied by

Partnership
Property.

the Partners exclusively for the purposes of the partnership, and in accordance with the partnership agreement.

(2) Provided that the legal estate or interest in any land, or in Scotland the title to and interest in any heritable estate, which belongs to the partnership, shall devolve according to the nature and tenure thereof, and the general rules of law thereto applicable, but in trust, so far as necessary, for the persons beneficially interested in the land under this section.

(3) Where co-owners of an estate or interest in any land, or in Scotland of any heritable estate, not being itself partnership property, are Partners as to profits made by the use of that land or estate, and purchase other land or estate out of the profits to be used in like manner, the land or estate so purchased belongs to them, in the absence of an agreement to the contrary, not as Partners, but as co-owners for the same respective estates and interests as are held by them in the land or estate first mentioned at the date of the purchase.

Property
bought with
Partnership
Money.

21. Unless the contrary intention appears, property bought with money belonging to the firm is deemed to have been bought on account of the firm.

24. The interests of Partners in the partnership property and their rights and duties in relation to the partnership shall be determined subject to any agreement, express or implied, between the Partners by the following Rules—

Rules as to
Interests and
Duties of Part-
ners subject to
special
agreement.

(1) All the Partners are entitled to share equally in the capital and profits of the business, and must contribute equally towards the losses, whether of capital or otherwise, sustained by the firm.

If it has been agreed that profits shall be divided in a certain proportion, the inference in the absence of an agreement to the contrary is that losses are to be shared in the same proportion.

An agreement for inequality may be conclusively inferred from the mode in which the Partners have dealt with each other, and from the contents of the partnership books.—*Stewart v. Forbes*, 1 Mac. & G. 137.

In ascertaining the "profits" of a partnership (Solicitors) in the absence of special agreement to the contrary, the net profits of

each year must be ascertained on the footing of the moneys actually received and paid in that year without reference to when the work is done in respect of which the moneys are received.—*Badham v. Williams* [1902], 86 L.T.R. 191.

In the absence of any agreement to the contrary Partners are liable to share losses equally.—*Saffery v. Mayer* [1901], 1 K.B. 11.

(2) The firm must indemnify every Partner in respect of payments made and personal liabilities incurred by him—

(a) In the ordinary and proper conduct of the business of the firm ; or,

(b) In or about anything necessarily done for the preservation of the business or property of the firm.

(3) A Partner making, for the purpose of the partnership, any actual payment or advance beyond the amount of capital which he has agreed to subscribe, is entitled to interest at the rate of five per cent. per annum from the date of the payment or advance.

(4) A Partner is not entitled, before the ascertainment of profits, to interest on the capital subscribed by him.

(5) Every Partner may take part in the management of the partnership business.

(6) No Partner shall be entitled to remuneration for acting in the partnership business.

(7) No person may be introduced as a Partner without the consent of all existing Partners.

(8) Any difference arising as to ordinary matters connected with the partnership business may be decided by a majority of the Partners, but no change may be made in the nature of the partnership business without the consent of all existing Partners.

(9) The partnership books are to be kept at the place of business of the partnership (or the principal place, if there is more than one), and every Partner may, when he thinks fit, have access to and inspect and copy any of them.

(1) G., M. & W. went into partnership under a parol agreement that the capital of the business should be contributed by them in certain unequal shares, but that profits should be divided equally. Upon a dissolution, after satisfying all liabilities to creditors, and the advances of two of the Partners, the assets were insufficient to

make good the capital. A considerably larger sum was due in respect of capital to G. than to M. :

Held, that the true principle of division of assets was for each Partner to be treated as liable to contribute an equal third share of the deficiency, and then to apply the assets in paying to each Partner rateably what was due to him in respect of capital.—*Garner v. Murray* [1904], 1 Ch. 57.

(9) Under this sub-section a Partner is entitled to have the books and accounts examined on his behalf by a Chartered Accountant or by an Agent appointed by him for the purpose, provided that the Agent is a person to whom no reasonable objection can be taken by the other Partners, the Agent undertaking not to make use of the information which he should thus acquire, except for the purpose of confidentially advising his principal.—*Bevan v. Webb* [1901], 2 Ch. 59.

A Partner cannot, however, insist on the production of documents to an improper person.—*Dadswell v. Jacobs* [1887], 34 Ch. D. 278.

27.—(1) Where a partnership entered into for a fixed term is continued after the term has expired, and without any express new agreement, the rights and duties of the Partners remain the same as they were at the expiration of the term, so far as is consistent with the incidents of a partnership at will.

Where
Partnership
for term is
continued over,
continuance
on old terms
presumed.

(2) A continuance of the business by the Partners or such of them as habitually acted therein during the term, without any settlement or liquidation of the partnership affairs, is presumed to be a continuance of the partnership.

28. Partners are bound to render true accounts and full information of all things affecting the partnership to any Partner or his legal representatives.

Duty of Part-
ners to render
Accounts, etc.

29.—(1) Every Partner must account to the firm for any benefit derived by him without the consent of the other Partners from any transaction concerning the partnership, or from any use by him of the partnership property, name, or business connection.

Accountability
of Partners
for Private
Profits.

(2) This section applies also to transactions undertaken

after a partnership has been dissolved by the death of a Partner, and before the affairs thereof have been completely wound up, either by any surviving Partner or by the representatives of the deceased Partner.

39. On the dissolution of a partnership, every Partner is entitled, as against the other Partners in the firm, and all persons claiming through them in respect of their interests

**Rights of
Partners as
to application
of Partnership
Property.**

as Partners, to have the property of the partnership applied in payment of the debts and liabilities of the firm, and to have the surplus assets, after such payment, applied in payment of what may be due to the Partners respectively, after deducting what may be due from them as Partners to the firm; and for that purpose any Partner or his representatives may, on the termination of the partnership, apply to the Court to wind up the business and affairs of the firm.

40. Where one Partner has paid a premium to another on entering into a partnership for a fixed term, and the partnership is dissolved before the expiration of that term, otherwise than by the death of a Partner, the Court may order the repayment of the premium, or of such part thereof as it thinks just, having regard to the terms of the partnership contract, and to the length of time during which the partnership has continued; unless

**Apportionment
of Premium
where Part-
nership
prematurely
dissolved.**

(a) the dissolution is, in the judgment of the Court, wholly or chiefly due to the misconduct of the Partner who paid the premium; or,

(b) the partnership has been dissolved by an agreement containing no provision for a return of any part of the premium.

42.—(1) Where any Member of a firm has died, or other-

**Right of
Partner in
certain cases
to share Profits
made after
dissolution.**

wise ceased to be a Partner, and the surviving or continuing Partners carry on the business of the firm, with its capital or assets, without any final settlement of accounts as between the firm and the outgoing Partner or his estate, then, in the absence of any agreement to the contrary, the outgoing Partner or his estate is entitled at the

option of himself or his representatives to such share of the profits made since the dissolution as the Court may find to be attributable to the use of his share of the partnership assets, or to interest at the rate of five per centum per annum on the amount of his share of the partnership assets.

(2) Provided that where by the partnership contract an option is given to surviving or continuing Partners to purchase the interest of a deceased or outgoing Partner, and that option is duly exercised, the estate of the deceased Partner, or the outgoing Partner, or his estate, as the case may be, is not entitled to any further or other share of profits; but if any Partner, assuming to act in exercise of the option, does not in all material respects comply with the terms thereof, he is liable to account under the foregoing provisions of this section.

43. Subject to any agreement between the Partners, the amount due from surviving or continuing Partners to an outgoing Partner, or the representative of a deceased Partner, in respect of the outgoing or deceased Partner's share, is a debt accruing at the date of the dissolution or death.

44. In settling accounts between the Partners after a dissolution of partnership, the following rules shall, subject to any agreement, be observed—

<p>Rule for distribution of Assets on final settlement of Accounts.</p>	<p>(a) Losses, including losses and deficiencies of capital, shall be paid first out of profits, next out of capital, and lastly, if necessary, by the Partners individually in the proportion in which they were entitled to share profits;</p>
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(b) The assets of the firm, including the sums, if any, contributed by the Partners to make up losses or deficiencies of capital, shall be applied in the following manner and order—

(1) In paying the debts and liabilities of the firm to persons who are not Partners therein;

(2) In paying to each Partner rateably what is due from the firm to him for advances as distinguished from capital;

(3) In paying to each Partner rateably what is due from the firm to him in respect of capital;

(4) The ultimate residue, if any, shall be divided among the Partners in the proportion in which profits are divisible.

THE LIMITED PARTNERSHIPS ACT, 1907

(7 Edw. VII, c. 24.)

[28th August, 1907.]

3. In the construction of this Act the following words and expressions shall have the meanings respectively assigned to them in this section, unless there be something in the subject or context repugnant to such construction—

**Interpretation
of Terms.**

“ Firm,” “ firm name,” and “ business ” have the same meanings as in the Partnership Act, 1890 ;

**53 & 54 Vict.
c. 39**

“ General Partner ” shall mean any partner who is not a limited Partner as defined by

this Act.

4.—(1) From and after the commencement of this Act, limited partnerships may be formed in the manner and subject to the conditions by this Act provided.

**Definition and
Constitution
of Limited
Partnership.**

(2) A limited partnership shall not consist, in the case of a partnership carrying on the business of banking, of more than ten persons, and, in the case of any other partnership, of more than twenty persons, and must consist of one or more persons called general Partners, who shall be liable for all debts and obligations of the firm, and one or more persons to be called limited Partners, who shall at the time of entering into such partnership contribute thereto a sum or sums as capital or property valued at a stated amount, and who shall not be liable for the debts or obligations of the firm beyond the amount so contributed.

(3) A limited Partner shall not during the continuance of the partnership, either directly or indirectly, draw out or receive back any part of his contribution, and if he does so draw out or receive back any such part shall be liable for the debts and obligations of the firm up to the amount so drawn out or received back.

(4) A body corporate may be a limited partner.

5. Every limited partnership must be registered as such in accordance with the provisions of this Act, or in default thereof it shall be deemed to be a general partnership, and every limited Partner shall be deemed to be a general Partner.

Registration
of Limited
Partnership
required.

6.—(1) A limited Partner shall not take part in the management of the partnership business, and shall not have power to bind the firm :

Modification of
General
Law in case
of Limited
Partnerships.

Provided that a limited Partner may by himself or his agent at any time inspect the books of the firm and examine into the state and prospects of the partnership business, and may advise with the Partners thereon.

If a limited Partner takes part in the management of the partnership business he shall be liable for all debts and obligations of the firm incurred while he so takes part in the management as though he were a general Partner.

Every Partner is entitled by the Partnership Act, 1890, Section 24 (9), to have access to and to inspect and copy the books of the partnership. He may also do this by his agent.—*Bevan v. Webb* [1901], 2 Ch. 59. See note to Partnership Act, 1890, Section 24 (9).

(2) A limited partnership shall not be dissolved by the death or bankruptcy of a limited Partner, and the lunacy of a limited Partner shall not be a ground for dissolution of the partnership by the Court unless the lunatic's share cannot be otherwise ascertained and realized.

(3) In the event of the dissolution of a limited partnership its affairs shall be wound up by the general Partners unless the Court otherwise orders.

(5) Subject to any agreement expressed or implied between the Partners—

(a) Any difference arising as to ordinary matters connected with the partnership business may be decided by a majority of the general Partners :

(b) A limited Partner may, with the consent of the general Partners, assign his share in the partnership, and,

upon such an assignment, the assignee shall become a limited Partner with all the rights of the assignor ;

(c) The other Partners shall not be entitled to dissolve the partnership by reason of any limited Partner suffering his share to be charged for his separate debt ;

(d) A person may be introduced as a Partner without the consent of the existing limited Partners ;

(e) A limited Partner shall not be entitled to dissolve the partnership by notice.

Law as to
Private Part-
nerships to
apply where
not excluded
by this Act.
53 & 54 Vict.
c. 39.

7. Subject to the provisions of this Act, the Partnership Act, 1890, and the rules of equity and of common law applicable to partnerships, except so far as they are inconsistent with the express provisions of the last-mentioned Act, shall apply to limited partnerships.

THE JUDICIAL TRUSTEES ACT, 1896 (59 & 60 Vict., c. 35.)

[14th August, 1896.]

1.—(1) Where application is made to the Court by or on behalf of the person creating or intending to create a trust, or by or on behalf of a Trustee or beneficiary, the Court may, in its discretion, appoint a person (in this Act called a Judicial Trustee) to be a Trustee of that trust, either jointly with any other person or as sole Trustee, and, if sufficient cause is shown, in place of all or any existing Trustees.

Power of
Court on
application to
appoint Judicial
Trustee.

(4) The Court may, either on request or without request give to a Judicial Trustee any general or special directions in regard to the trust or the administration thereof.

(5) There may be paid to a Judicial Trustee out of the trust property such remuneration not exceeding the prescribed limits, as the Court may assign in each case, subject to any rules under this Act respecting the application of such remuneration where the Judicial Trustee is an official of the

Court, and the remuneration so assigned to any Judicial Trustee shall, save as the Court may for special reasons otherwise order, cover all his work and personal outlay.

The following Rules under the Judicial Trustee Rules, 1897, are applicable to this Section—

17.—(1) Where a Judicial Trustee is to be remunerated the remuneration to be paid to him shall be fixed by the Court, and may be altered by the Court from time to time.

Remuneration of Judicial Trustee. (2) In fixing the remuneration, regard shall be had to the duties entailed upon the Judicial Trustee by the Trust.

(3) The Court may make, if it thinks fit, special allowances to Judicial Trustees for the following matters, to be paid out of the Trust property—

(a) For the Statement of Trust Property prepared by a Judicial Trustee on his appointment, an allowance not exceeding ten guineas ;

(b) For realizing and reinvesting Trust Property, where the property is realized for the purpose of reinvestment, an allowance not exceeding one and half per centum on the amount realized and reinvested ;

(c) For realizing or investing Trust Property in any other case, an allowance not exceeding one per centum on the amount realized or invested.

(4) The Court may also in any year make a special allowance to a Judicial Trustee, if satisfied that in that year more trouble has been thrown upon the Trustee by reason of exceptional circumstances than would ordinarily be involved in the administration of the Trust.

(5) Where a Trustee is remunerated, any allowance under this Rule may be paid in addition to his remuneration.

(6) Any remuneration or allowance payable to a Judicial Trustee shall be paid or allowed to him at such times and in such manner as the Court directs.

(6) Once in every year the Accounts of every trust, of which a Judicial Trustee has been appointed, shall be audited, and a Report thereon made to the Court by the prescribed persons, and, in any case where the Court shall so direct, an inquiry into the administration by a Judicial Trustee of any trust, or in any dealing or transaction of a Judicial Trustee, shall be made in the prescribed manner.

The following Rules under the Judicial Trustee Rules, 1897, are applicable to this section—

14.—(1) The Court shall give directions to a Judicial Trustee as to the date to which the Accounts of the Trust are to be made up in each year, and shall fix in each year the time after that date within which the Accounts are to be delivered to it for audit.

**Accounts and
Audit.**

(2) The Accounts shall in ordinary cases be audited by the officer of the Court, but the Court, if it considers that the Accounts are likely to involve questions of difficulty, may refer them to a Professional Accountant for report, and order the payment to him of such amount in respect of his report as the Court may fix.

Passing a Judicial Trustee's Accounts does not exonerate him from liability if an investment made by him is improper.—*Hutton v. Annan* [1898], A.C. 289.

15.—(1) The Accounts of any Trust of which there is a Judicial Trustee, with a note of any corrections made upon the audit, shall be filed as the Court directs.

**Filing and
Inspection of
Accounts.**

(2) The Judicial Trustee shall send a copy of the Accounts, or, if the Court thinks fit, of a Summary of the Accounts, of the Trust to such beneficiaries or other persons as the Court thinks proper.

(3) The Court may, if it thinks fit, having regard to the nature of the relation of the applicant to the Trust, allow any person applying to inspect the filed Accounts so to inspect them on giving reasonable notice to the officer of the Court.

16. A Judicial Trustee shall, unless the Court otherwise directs, be allowed on the audit of his Accounts deductions made on account of his remuneration and allowances under these Rules, and also on account of the fees paid by him under these Rules, but shall not be allowed any deduction on account of the expenses of professional assistance, or his own work or personal outlay, unless the deduction has been authorized by the Court in pursuance of the Act or the Court is satisfied that the deduction is justified by the strict necessity of the case.

**Deductions
allowed.**

The following Rules shall also be borne in mind by the Auditor—

9.—(9) Any premium payable by a Judicial Trustee to any Guarantee Company on account of his security may, if the Court so directs, be paid out of the Trust property.

**Trust Account
at Bank and
custody of
Documents.**

10.—(1) When a Judicial Trustee is appointed, a separate account for receipts and payments on behalf of the Trust must be kept in the names of the Trustees at some bank approved by the Court.

(2) All title-deeds and all certificates and other documents which are evidence of the title of the Trustee to any of the Trust property shall be deposited either with that bank or in such other custody as the Court directs.

11. A Judicial Trustee must pay all money coming into his hands on account of his Trust without delay to the Trust Account at the bank, and if he keeps any such money in his hands for a longer time than the Court considers necessary, shall be liable to pay interest upon it at such rate not exceeding five per centum as the Court may fix for the time during which the money remains in his hands.

THE PUBLIC TRUSTEE ACT, 1906
(6 Edw. VII, c. 55.)

[21st December, 1906.]

1.—(1) There shall be established the office of Public Trustee.

Office of Public Trustee. (2) The Public Trustee shall be a corporation sole under that name, with perpetual succession and an official seal, and may sue and be sued under the above name like any other corporation sole, but any instruments sealed by him shall not, by reason of his using a seal, be rendered liable to a higher stamp duty than if he were an individual.

4.—(1) Subject to rules under this Act the Public Trustee may, if he consents to act as such, and whether or not the number of Trustees has been reduced below the original number, be appointed to be a Custodian Trustee of any trust—

(2) Where the Public Trustee is appointed to be Custodian Trustee of any trust—

(a) The trust property shall be transferred to the Custodian Trustee as if he were sole Trustee, and for that purpose vesting orders may, where necessary, be made under the Trustee Act, 1893 :

(b) The management of the trust property and the exercise of any power or discretion exercisable by the Trustees under the trust shall remain vested in the Trustees other than the Custodian Trustee (which Trustees are hereinafter referred to as the Managing Trustees) :

(c) As between the Custodian Trustee and the Managing

Trustees, and subject and without prejudice to the rights of any other persons, the Custodian Trustee shall have the custody of all securities and documents of title relating to the trust property, but the Managing Trustees shall have free access thereto and be entitled to take copies thereof or extracts therefrom :

(d) The Custodian Trustee shall concur in and perform all acts necessary to enable the Managing Trustees to exercise their powers of management or any other power or discretion vested in them (including the power to pay money or securities into Court), unless the matter in which he is requested to concur is a breach of trust, or involves a personal liability upon him in respect of calls or otherwise, but, unless he so concurs, the Custodian Trustee shall not be liable for any act or default on the part of the Managing Trustees or any of them :

(e) All sums payable to or out of the income or capital of the trust property shall be paid to or by the Custodian Trustee: Provided that the Custodian Trustee may allow the dividends and other income derived from the trust property to be paid to the Managing Trustees or to such person as they direct, or into such bank to the credit of such person as they may direct, and in such case shall be exonerated from seeing to the application thereof, and shall not be answerable for any loss or misapplication thereof.

(3) The provisions of this section shall apply in like manner as to the Public Trustee to any banking or insurance company or other body corporate entitled by rules made under this Act to act as Custodian Trustee, with power for such company or body corporate to charge and retain or pay out of the trust property fees not exceeding the fees chargeable by the Public Trustee as Custodian Trustee.

5.—(1) The Public Trustee may by that name, or any other sufficient description, be appointed to be Trustee of any will or settlement or other instrument creating a trust or to perform any trust or duty belonging to a class which he is authorized by the rules made under this Act to accept.

Appointment of
Public Trustee
to be Trustee,
Executor, etc.

9.—(1) There shall be charged in respect of the duties of the Public Trustee such fees, whether by way of percentage or otherwise, as the Treasury with the sanction of the Lord Chancellor may fix, and such fees shall be collected and accounted for by such persons, and in such manner, and shall be paid to such account, as the Treasury direct.

**Fees charged
by Public
Trustee.**

(2) Any expenses which might be retained or paid out of the trust property if the Public Trustee were a Private Trustee shall be so retained or paid, and the fees shall be retained or paid in the like manner as and in addition to such expenses.

(3) Such fees shall, under the regulations of the Treasury, be applied as an appropriation in aid of moneys provided by Parliament for expenses under this Act, and so far as not so applied shall be paid into the Exchequer.

(4) The fees under this section shall be arranged from time to time so as to produce an annual amount sufficient to discharge the salaries and other expenses incidental to the working of this Act (including such sum as the Treasury may from time to time determine to be required to insure the Consolidated Fund against loss under this Act) and no more.

(5) The incidence of the fees and expenses under this section as between capital and income shall be determined by the Public Trustee.

11.—(2) The Public Trustee may, subject to the rules made under this Act, employ for the purposes of any trust such Solicitors, Bankers, Accountants, and Brokers, or other persons as he may consider necessary.

**Mode of Action
of Public
Trustee.**

13.—(1) Subject to rules under this Act and unless the Court otherwise orders, the condition and accounts of any trust shall, on an application being made and notice thereof given in the prescribed manner by any Trustee or beneficiary, be investigated and audited by such Solicitor or public Accountant as may be agreed on by the applicant and the Trustees, or, in default of agreement, by the Public Trustee or some person appointed by him.

**Investigation
and Audit
of Trust
Accounts.**

Provided that (except with the leave of the Court) such an investigation or audit shall not be required within twelve months after any such previous investigation or audit, and that a Trustee or beneficiary shall not be appointed under this section to make an investigation or audit.

By Section 31 of the Public Trustee Rules, 1912, any application under this section of the Act shall be made to the Public Trustee and may be in the following form,—

I, *being a beneficiary under the Will of which was proved together with a Codicil on the* **HEREBY MAKE APPLICATION** *that the condition and accounts of the trust contained in the said Will in favour of myself and my children and in certain contingencies in favour of other persons be investigated and audited under and in accordance with the provisions contained in Section 13 of the Public Trustee Act, 1906, and the Rules made thereunder.*

No such investigation or audit has been held within of the date of this application.

DATED this day of 19 .

Notice of the above application shall (unless the Public Trustee otherwise directs) be given by the applicant to every other person being a Trustee or Beneficiary under the Trust. Such notice may be in the following form—

To
The Trustee of the Trust created by the Will of deceased, in favour of

I, *being a beneficiary under the trust created by the Will of which was proved together with a Codicil) on the* **HEREBY GIVE YOU NOTICE** *that under and in accordance with the provisions contained in Section 13 of the Public Trustee Act, 1906, and the Rules made thereunder I have this day as such beneficiary as aforesaid made an application to the Public Trustee that the condition and accounts of the trust created by the said Will in favour of myself and my children and in certain contingencies in favour of other persons be investigated and audited in accordance with the said Statutory provision. AND I further request you the said to agree with me, within one month from the day of* *being the day on which the application above referred to was made, upon the appointment of a Solicitor or Public Accountant to conduct such investigation and audit.*

DATED this day of 19 .

(2) The person making the investigation or audit (hereinafter called the Auditor) shall have a right of access to the books, accounts, and vouchers of the Trustees, and to any securities and documents of title held by them on account of the trust, and may require from them such information and explanation as may be necessary for the performance of his duties, and upon the completion of the investigation and audit shall forward to the applicant and to every Trustee a copy of the accounts, together with a report thereon, and a certificate signed by him to the effect that the accounts exhibit a true view of the state of the affairs of the trust and that he has had the securities of the trust fund investments produced to and verified by him or (as the case may be) that such accounts are deficient in such respects as may be specified in such certificate.

(3) Every beneficiary under the trust shall, subject to rules under this Act, be entitled at all reasonable times to inspect and take copies of the accounts, report, and certificate, and, at his own expense, to be furnished with copies thereof or extracts therefrom.

(4) The Auditor may be removed by order of the Court, and, if any Auditor is removed, or resigns, or dies, or becomes bankrupt or incapable of acting before the investigation and audit is completed, a new Auditor may be appointed in his place in like manner as the original Auditor.

(5) The remuneration of the Auditor and the other expenses of the investigation and audit shall be such as may be prescribed by rules under this Act, and shall, unless the Public Trustee otherwise directs, be borne by the estate; and, in the event of the Public Trustee so directing, he may order that such expenses be borne by the applicant or by the Trustees personally or partly by them and partly by the applicant.

(6) If any person having the custody of any documents to which the Auditor has a right of access under this section fails or refuses to allow him to have access thereto or in anywise obstructs the investigation or audit, the Auditor may apply to the Court, and thereupon the Court shall make such order as it thinks just.

An Auditor having been appointed by the Public Trustee to investigate the conditions and Accounts of a trust estate, the acting Trustee declined to produce to the Auditor the necessary books and documents except on the terms that the costs of the Audit should be borne by these beneficiaries who had asked for it. It was held (1) that the Trustee had no right to refuse access to the books and documents by the Auditor ; and (2) that there was no ground for limiting the audit to capital matters.—*In re James Williams, deceased, and In re The Public Trustee Act*, 1906 [1910], 26 T.L.R 604.

Where the Public Trustee directs that the costs of an audit of Trust Accounts under Section 13 of the Public Trustee Act, 1906, shall be paid otherwise than out of the trust estate, the person ordered to pay the costs can appeal to the Court, under Section 10 of the Act, from his decision.

Section 10 of the Act applies to all decisions of the Public Trustee in discharge of his judicial functions under the Act.

Before making an order for payment of the costs of an audit under Section 13 of the Act otherwise than out of the trust estate, the Public Trustee should hear the parties if they desire to be heard.

The Public Trustee ought not to be joined as a party to proceedings by way of appeal from his decision in discharge of his judicial functions.

Quaere, whether an appeal does not lie from every act or omission of the Public Trustee in the performance of his administrative functions under the Act.

In re Oddy [1911] 1 Ch. 532.

(7) Subject to Rules of Court, applications under or for the purposes of this section to the High Court shall be made to a Judge of the Chancery Division in Chambers.

(8) If any person in any statement of accounts, report, or certificate required for the purposes of this section wilfully makes a statement false in any material particular, he shall be liable on conviction on indictment to imprisonment for a term not exceeding two years, and on summary conviction to imprisonment for a term not exceeding six months, with or without hard labour, and in either case to a fine in lieu of or in addition to such imprisonment.

THE PUBLIC TRUSTEE RULES, 1912

INTERPRETATION

1. In these Rules the expression "the Act" means the Public Trustee Act, 1906, and unless there is anything in the context or in the Act inconsistent therewith—

The expression "Trust" includes any Trust duty or office which the Public Trustee is authorized by the Act or these Rules to accept; and the expression "Trustee" shall be construed accordingly.

The expression "Trust instrument" includes any instrument, Act of Parliament, or Order of Court by which a Trust is created or declared.

The expression "Trust property" includes all property subject to a Trust, or comprised in an estate, which is proposed to be administered by the Public Trustee.

OFFICES

3.—(2) Branch Offices may from time to time be established.

DEPUTY PUBLIC TRUSTEES

4. There shall be Deputy Public Trustees at any branch offices so established who shall be officers of the Public Trustee, and shall have the powers and perform the duties assigned to them by or under these Rules. Their number shall be such as the Lord Chancellor, with the sanction of the Treasury, may from time to time prescribe.

SECURITY

5. Security shall be given by such persons employed under the Act as the Treasury may direct for the due performance of their duties, and for the due accounting for and payment of all moneys received by them in pursuance of the Act and these Rules.

AUTHORIZED TRUSTEES AND DUTIES

6. Subject to the Act and these Rules the Public Trustee is authorized—

(a) to accept any Trust created or declared by any Trust instrument or arising upon an intestacy ;

(b) to accept any duty incident to, and to act in, any of the following offices, viz. : (i) as incident to the office of Trustee of any Trust accepted by him the office of guardian of any infant beneficiary, (ii) the office (where the execution of any Trust is involved therein) of agent or attorney for any person ;

(c) to accept by the name of the Public Trustee probate or letters of administration of any kind and either as principal or as agent for any person ;

(d) to accept as Custodian Trustee any Trust created or declared by any Trust instrument ;

(e) to receive any money or damages paid to him in pursuance of the Rules of the Supreme Court, Order 22, Rule 15, or any rule which may be substituted therefor, and to apply the same

in accordance with such rule or any directions of the Court or a Judge thereunder.

Provided that he shall not accept the Trusts of any instrument made solely by way of security for money.

7. The Public Trustee may if he thinks fit—

(1) act as Custodian Trustee of a Trust which involves the management or carrying on of any business, but upon the conditions that (a) he shall not act in the management or carrying on of such business, and (b) he shall not hold any property of such a nature as will expose the holder thereof to any liability except under exceptional circumstances and when he is satisfied that he is fully indemnified or secured against loss; and

(2) accept as ordinary Trustee, under exceptional circumstances, a Trust which involves the management or carrying on of any business, but upon the conditions that, except with the consent of the Treasury, he shall only carry on the same (a) for a short time not exceeding eighteen months, and (b) with a view to sale disposition or winding-up, and (c) if satisfied that the same can be carried on without risk of loss.

TRUSTEESHIPS

8.—(1) A Testator may appoint the Public Trustee to be Trustee or Custodian Trustee under any testamentary instrument without previously applying to him for his consent to act as such.

(2) No such appointment by a testator shall have effect, and no appointment of the Public Trustee to be Trustee or Custodian Trustee shall be made except by a Testator, unless and until (in either case) the consent of the Public Trustee to act as such Trustee shall have been obtained in accordance with these Rules. Provided that in the case of any such appointment by a Testator the Public Trustee shall at any time after the fact of his appointment shall have come to his knowledge be at liberty to act as if an application for his consent had been received by him.

(3) It shall be the duty of any person appointed by a Testator to be Co-trustee with the Public Trustee, and not renouncing or disclaiming the Trust, to give to the Public Trustee notice in writing of such appointment as soon as practicable after the same has come to his knowledge.

9. Upon receiving an application for his consent to act as Trustee or as Custodian Trustee the Public Trustee may require to be produced to him the Trust instrument (if any), and may require to be supplied to him a copy of that instrument, and of any other document affecting the Trust, and such particulars as to the nature and value of any Trust property, and the liabilities (if any) attaching to such property, or the holder thereof, and the names and places of abode of any beneficiaries and Trustees under the Trust, and

such other information relating to the Trust as he may consider it desirable to obtain in any particular case.

10. As soon as may be after receiving any such application the Public Trustee shall take into consideration upon such evidence as may appear to him sufficient—

- (a) the gross capital value of the Trust property ;
- (b) the mode of investment and the condition of the Trust property ;
- (c) the situation, tenure, and character of any land comprised in the Trust property ;
- (d) any liability attaching to the Trust property or the holder thereof ;
- (e) the duties incident to the office of Trustee or the Trust ;
- (f) the places of abode and circumstances of any beneficiaries ; and
- (g) all the circumstances of the case ;

and shall decide whether the application ought to be accepted or refused, and shall give notice to the applicant of such acceptance or refusal, and in case of acceptance shall in writing under his hand and official seal signify his consent to act in the Trust.

11. Upon the appointment of the Public Trustee being completed, the Public Trustee shall consider and determine whether the Trust shall be administered from his Central Office or from a Branch Office, and shall give directions accordingly, and any such directions may at any time be rescinded or varied by the Public Trustee at his discretion.

ADMINISTRATION OF SMALL ESTATES

12. Upon receiving an application under Section 3 (1) of the Act the Public Trustee shall require to be supplied to him such evidence as to the value of the estate, and the circumstances of the persons beneficially entitled, and such other information relating thereto as he may consider it desirable to obtain in any particular case.

13.—(1) If it is not proved to the satisfaction of the Public Trustee that the gross capital value of the estate is less than £1,000, or if it does not appear to him that the persons beneficially entitled are persons of small means, or if he sees any other good reason for refusing the application, he shall refuse the same, and shall forthwith give notice to the applicant of such refusal.

(2) In any other case the Public Trustee shall make in respect of the estate the declaration mentioned in Section 3 (2) of the Act, and shall give notice to the applicant that the application is accepted, and shall take such other steps as may be necessary or proper to enable him to administer the estate ; and any person

having the custody of the probate or letters of administration, or other document relating to the estate, shall, upon the request in writing of the Public Trustee, deliver the same to him, or as he shall direct.

(3) A refusal under this Rule shall not prevent the Public Trustee from exercising, with respect to the estate, any powers (other than the powers under Section 3 of the Act) exercisable by him with respect thereto under the Act or these Rules, if duly appointed to exercise the same.

(4) Upon the acceptance of any application the Public Trustee shall consider and determine whether the estate shall be administered from his Central Office or from a Branch Office, and shall give directions accordingly, and any such directions may at any time be rescinded or varied by the Public Trustee at his discretion.

14. For the purposes of the administration the Public Trustee shall (subject as hereinafter provided) have all the administrative powers and authorities exercisable by a Master of the Supreme Court acting in the administration of an estate.

15.—(1) The Public Trustee may, in manner hereinafter provided and without judicial proceedings, take the opinion of the High Court upon any question arising in the course of an administration.

(3) Any such question shall be submitted to the Judge in such manner and at such time as he may direct, and shall be accompanied by such statement of facts, documents, and other information as he may require, and the Public Trustee shall, if the Judge so desires, attend upon him at such time and place as the Judge may appoint.

(4) The Judge may, before giving his opinion, require the attendance of, or communicate with any person interested in the estate as Trustee or beneficiary, but no such person shall have a right to be heard by the Judge unless he otherwise directs.

(5) The Judge shall give his opinion to the Public Trustee, and the Public Trustee shall act in accordance with such opinion, and shall, upon the request in writing of any such interested person, communicate to him the effect of such opinion.

ADMINISTRATION OF TRUSTS AND ESTATES

16. There shall be kept at the Central Office in London of the Public Trustee such registers and other books as shall be required for recording or entering in a convenient form as to each Trust or estate which the Public Trustee is administering the particulars following—

(a) the date of the acceptance of the Trust or of the declaration made under Section 3 (2) of the Act ;

(b) particulars of the Trust property from time to time ;

(c) the names and place of abode of the person in receipt of the income of the Trust property ;

(d) a reference to any notice received of any dealing with any beneficial interest in the Trust property, and of any exercise or release of any power relating to the Trust or estate ;

(e) an entry of any decision or opinion of the High Court in respect of the Trust or estate ;

(f) such entries of his decisions and such other particulars as the Public Trustee may think fit ;

and such particulars shall be recorded or entered accordingly.

17. The Public Trustee may invest or retain invested money belonging to any Trust or estate and coming to his hands in any mode of investment expressly or impliedly authorized by the Trust instrument or (if there is no Trust instrument) authorized by law for the investment of Trust funds, and may, if authorized by the Trust instrument or otherwise by law, retain any investment existing at the date of the commencement of the Trust. Provided that he shall not invest in or hold any investment in such manner as to expose him to liability as the holder thereof, unless he is satisfied that he is fully indemnified or secured against loss.

18.—(1) The securities and documents belonging or relating to a Trust or estate which the Public Trustee is administering shall, if under his control, be kept at the bank to the Trust or estate or at some other safe place of deposit allowed generally or specially by the Treasury, so far as the convenience of business will admit.

(2) All orders for the withdrawal of securities or documents from any such bank or other place of deposit shall be signed by not less than two persons, viz. : (a) by the Public Trustee and a Co-trustee, or (b) by the Public Trustee and an officer of the Public Trustee authorized in writing by him to act in that behalf, either generally or in any particular case, or (c) by a Co-trustee and one such duly authorized officer, or (d) by two such duly authorized officers.

19.—(1) Separate Accounts shall be kept for every Trust or estate.

(2) A separate Account shall be kept of the capital of the Trust property and of the mode in which it is from time to time invested, and all dealing with such capital shall be entered in such Account.

(3) A separate Account shall be kept of the income of the Trust property (if received by the Public Trustee), and of the mode in which it is from time to time dealt with by the Public Trustee.

20. All payments of money to or from the capital of the Trust property shall be made through the bank to the Trust or estate.

21.—(1) No transfer by the Public Trustee of any securities or assurance by him of any land forming part of the Trust property

shall be made except under the hand and official seal of the Public Trustee, or under the hand and seal of an officer of the Public Trustee authorized in writing by him to act in that behalf either generally or in any particular case.

(2) Any such transfer or assurance by an officer so authorized shall have the same effect as if the same were made by the Public Trustee under his hand and official seal.

22. All sums payable out of the income or Capital of the Trust property shall be made by a cheque on a bank signed by not less than two persons, viz. : (a) by the Public Trustee and a Co-trustee, or (b) by the Public Trustee and an officer of the Public Trustee authorized in writing by him to act in that behalf either generally or in any particular case, or (c) by a Co-trustee and one such duly authorized officer, or (d) by two such duly authorized officers. Provided that in any particular case the Public Trustee may authorize the payment of income by the person liable to pay the same direct to the person entitled to receive the same, or to his bank.

23.—(1) The income of the Trust property may be paid to the person for the time being entitled to receive the same either through a bank or direct, and where such person is a married woman may be so paid notwithstanding any restraint on anticipation.

(2) Where authority is given to any Corporation or bank to pay any income to any person, the books of that Corporation or bank showing the payment of that income in accordance with the authority shall be a sufficient discharge to the Public Trustee.

(3) Where authority is given to any person to pay any income to the bank of the person entitled, the certificate of that bank stating the receipt of that income shall be a sufficient discharge to the Public Trustee.

(4) Where any person is solely entitled to receive any income, the Public Trustee may, on the request in writing of that person, and notwithstanding any restraint on anticipation, authorize that person for such period as the Public Trustee may think fit to collect or arrange for the collection of such income. During the continuance of any such authority such request in writing shall be a sufficient discharge to the Public Trustee in respect of such income.

24. The Public Trustee may, if the special circumstances of the case appear to him to render it desirable, pay to any other Trustee of the Trust, or allow him to receive, the income of the Trust property or any part thereof, on such Trustee undertaking to apply it in manner directed by the Trust.

25. The Public Trustee may make advances for the purposes of any Trust or estate in course of administration, or about to be

administered, by him, out of any moneys which may be placed at his disposal by the Treasury for that purpose, and upon such terms as he may think proper.

26. Subject to the provisions of the Act and of these rules and to the terms of any particular Trust, the Public Trustee may, in the administration of any Trust or estate, take and use professional advice and assistance in regard to legal and other matters, and may act on credible information (though less than legal evidence) as to matters of fact.

27. The Public Trustee may at any time require a statutory declaration or other sufficient evidence that a person is alive and is the person to whom any money or property is payable or transferable, and may refuse payment or transfer until such declaration or evidence is produced.

28. Where a person appearing to be beneficially entitled to any sum of money under the Trust or to be interested in the Trust property cannot be found, or it is not known whether he is living or dead, the Public Trustee may apply to the Court for directions as to the course to be taken with reference to such person, and until an Order of the Court is made shall keep any sum payable to such person, and if it is kept for more than six months shall invest the same or deposit the same at interest and shall accumulate the dividends or interest thereof.

29.—(1) Upon an application in writing by or with the authority of any person interested in the Trust property the Public Trustee—

(a) shall permit the applicant or his Solicitor or other authorized agent to inspect and take copies of any entry in any Register or book relating to the Trust or estate and (so far as the interest of the applicant in the Trust property is or may be affected thereby) or any account notice or other document in the custody of the Public Trustee ;

(b) shall at the expense of the applicant supply him or his Solicitor or other authorized agent with a copy of any such entry account notice or document as aforesaid, or with any extract therefrom;

(c) shall give to the applicant or his Solicitor or other authorized agent such information respecting the Trust or estate and the Trust property as shall be reasonably requested in the application and shall be within the power of the Public Trustee.

(2) Subject as aforesaid the Public Trustee shall observe strict secrecy in respect of every Trust or estate in course of administration by him.

CORPORATE BODIES AS CUSTODIAN TRUSTEES

30. Any incorporated Banking or Insurance or Guarantee or Trust Company or other body corporate for the time being

empowered (by the Act of Parliament, Charter, Memorandum of Association, Deed of Settlement, or other instrument constituting it or defining its powers) to undertake Trusts shall be entitled to act as Custodian Trustee, but for so long a time only as such body corporate shall not, by any prospectus, circular, advertisement, or other document issued by it or on its behalf, state or hold out that any liability attaches to the Public Trustee or to the Consolidated Fund of the United Kingdom in respect of any act or omission of such body corporate when so acting.

INVESTIGATION AND AUDIT OF TRUST ACCOUNTS

31. Any application under Section 13 (1) of the Act shall be made to the Public Trustee, and notice thereof shall (unless the Public Trustee otherwise directs) be given by the applicant to every other person being a Trustee or beneficiary under the Trust.

32.—(1) Upon receiving any such application the Public Trustee may in his absolute discretion by notice to the applicant require that before a day to be specified in the notice such security (by deposit of a sum of money) as he shall deem sufficient shall be given to him by the applicant for the payment of any expenses of the investigation and audit which may be ordered by the Public Trustee to be paid by the applicant personally.

(2) Where any such requirement is made no further proceedings shall be taken upon the application until the security has been given, and if the same is not given before the day specified in the notice the application shall be disallowed, unless under special circumstances the Public Trustee thinks fit to extend the time for giving the security or to dispose therewith.

(3) Any sum so deposited shall be kept by the Public Trustee on deposit in his name and to a separate account at a Bank until all proceedings in connection with the investigation and audit have been concluded, and thereupon the deposited sum and the interest (if any) allowed thereon by the Bank shall be applied in or towards payment of any expenses of the investigation and audit which may be so ordered to be paid by the applicant personally and the balance (if any) shall be paid to the applicant.

33. The Public Trustee may in his absolute discretion upon the application of any Trustee or beneficiary direct that the investigation and audit shall extend only to a specified period of time or to a specified part of the trust property or shall be otherwise restricted.

34. If within one month from the date of the application under Section 12 (1) of the Act no Solicitor or public accountant shall have been appointed by the applicant and the Trustees to conduct the investigation and audit, there shall be deemed to be a default

of agreement within the meaning of the said Section 13 (1) and the applicant may apply to the Public Trustee accordingly.

35. The remuneration of the Auditor and the other expenses of the investigation and audit shall be such as may be determined by the Public Trustee. Provided that the Public Trustee may refer the costs of any Solicitor (being part of such expense) for taxation to a Taxing Master of the Supreme Court, and in such cases the amount of the said costs when taxed shall be included in such expenses.

36.—(1) Where any investigation or audit has been made, copies of the report and certificate of the Auditor under Section 13 (2) of the Act and such copies of Accounts and other documents as the Public Trustee may require shall be forwarded to him by the Auditor, and shall be considered by the Public Trustee before giving any direction or making any order under Section 13 (5) of the Act.

(2) The expenses of making and forwarding any such copies as aforesaid and the fee of the Public Trustee (within the limits prescribed by or in pursuance of any order relating to the fees of the Public Trustee for the time being in force) shall for the purpose of Section 13 (5) of the Act be part of the expenses of the investigation and audit.

37.—(1) Before making any order under Section 13 (5) of the Act the Public Trustee shall, if any of the parties interested so desire, hear the said parties in such manner as he shall think fit.

(2) Any such order shall specify the person by or to whom any sum is to be paid and the amount of such sum; Provided that such an order may direct payment of the taxed costs of any solicitor employed in connection with the investigation and audit, and such costs shall be taxed by a Taxing Master of the Supreme Court, and the amount of such costs when taxed shall be paid as if such amount had been specified in the Order.

(3) Any such Order may be enforced in the same manner as a judgment or order of the Court to the same effect.

MISCELLANEOUS

38. The accounts of the Public Trustee shall be audited and the securities held by him verified from time to time by such person or persons as the Treasury may appoint in accordance with regulations made by the Treasury.

39. Any Officer of the Public Trustee who shall be authorized by him in writing in that behalf may take any oath, make any declaration, verify any account and give personal attendance at any Court or place.

40.—(1) Any notice or application required to be given or made for the purposes of the Act or these Rules to the Public Trustee may be addressed to the Public Trustee at his office in London, or if the same relates to a trust or estate in course of administration or proposed to be administered from a Branch Office then at that Branch Office.

42.—(1) The Public Trustee may in writing authorize any Deputy Public Trustee to exercise and perform (either generally or in relation to any particular case and subject to such conditions and restrictions (if any) as the Public Trustee may impose) all or any of the powers and duties of the Public Trustee under any of the foregoing Rules except—

(a) the power or duty of determining whether a Trust or estate shall be administered from his Central Office or from a Branch Office ; and

(b) the power of authorizing officers of the Public Trustee to transfer securities or assure land or to sign cheques ;

(c) the power to make advances for the purpose of any Trust or estate.

(2) Any such authority conditions or restrictions may at any time in like manner be withdrawn or varied by the Public Trustee at his discretion.

43. No Deputy Public Trustee and no firm or member of a firm of Solicitors of which such Deputy is a member shall, except with the consent in writing of the Public Trustee and subject to such conditions as he may impose, act as Solicitor or Solicitor to a Trust or estate which is in course of administration by such Deputy.

THE PUBLIC TRUSTEE (FEES) ORDER, 1920

1. In this Order and in the Schedule hereto (unless the context otherwise requires)—

(a) Words to which a meaning is assigned by the Public Trustee Rules, 1912,¹ shall have the same respective meanings as in those Rules.

(b) Words referring to the acceptance of a trust shall be deemed to include a reference to an undertaking to administer an estate under Section 3 of the Act.

(c) The expression " Income of the trust property " includes any income arising under the trust.

(d) The word " Will " includes any testamentary disposition.

(e) The expression " gross capital value " where used in relation to the estate of a deceased person means the value of the estate

¹ S R. & O., 1912, No. 348/L. 9.

without deduction for funeral or testamentary expenses or debts (other than debts specifically charged upon any property).

2. The Interpretation Act, 1889,¹ applies for the purpose of the interpretation of this Order as it applies for the purpose of the interpretation of an Act of Parliament.

3. Subject as hereinafter provided and subject to the provisions of any statute the fees mentioned in the Schedule to this Order shall be paid in respect of the duties in that Schedule referred to.

4. If at any time during the continuance of a trust in course of administration by the Public Trustee, any property (not arising from the accumulation of income of the trust property) shall become subject to the trust, in addition to the property comprised therein at the date of the acceptance thereof, there shall be paid in respect of the gross capital value of such additional property at the date on which it becomes subject to the trust a further fee of such amount as would have been payable in respect of that value if that value had formed part of the value of the property comprised in the trust at the date of such acceptance, and if this Order had been in force at that date.

5.—(1) Where it appears to the Public Trustee, upon accepting a trust, that the trust property consists wholly or partially of reversionary interests, or other property not in possession or not readily realisable (all which interests and property are hereinafter referred to as "reversionary property"), he may charge an additional fee, not exceeding one pound, upon acceptance of the trust.

(2) Where such additional fee is charged, then—

(a) upon the acceptance of the trust the reversionary property shall be excluded from the trust property for the purpose of ascertaining the amount of the fee payable in pursuance of the Schedule hereto upon such acceptance, and the said fee shall be calculated and paid as if the trust property (if any) other than the reversionary property were alone comprised in the trust; and

(b) there shall be paid in respect of the gross capital value of the reversionary property, or any part thereof, at the date on which the same falls into possession or is realized, an acceptance fee of such an amount as would have been payable in respect of that value upon the acceptance of the trust if that value had formed part of the value of the trust property, in respect of which the fee upon acceptance has previously been paid, or become payable, and if this Order had been in force at the date of such acceptance.

6.—(1) In any case in which it appears to the Public Trustee that the circumstances of a trust or estate in course of administration,

¹ 52-3 V. c. 63.

or proposed to be administered, by him are, or probably will be, such as to render his duties in relation thereto exceptionally onerous, he may, with the approval of the Treasury and subject as hereinafter provided charge a special fee in respect of the performance of such duties in addition to the fees payable in pursuance of the Schedule hereto.

(2) The Public Trustee may make the payment of, or an agreement to pay, such special fee a condition of his accepting a trust.

7. In any case in which it appears to the Public Trustee that the circumstances of a trust or estate in course of administration, or proposed to be administered, by him are, or probably will be, such as to render his duties in relation thereto exceptionally simple, or are otherwise of an exceptional character, he may, with the approval of the Treasury, remit any part (not exceeding one-half) of any fee payable in respect of the performance of such duties in pursuance of the Schedule hereto.

8. The Public Trustee may, in his discretion, upon the application of any person appearing to be interested in the income or capital of the trust property, commute any fee which, in pursuance of the Schedule hereto, would, but for the commutation, become payable upon that income or upon the withdrawal or distribution of the whole or any part of that capital for a certain sum to be presently paid, and for determining that sum he shall cause a present value to be set on that fee, regard being had to the circumstances and contingencies affecting the rate at which, and the occasion upon which, such fee would, but for the commutation, be payable, and interest being reckoned at four per cent.

9. In either of the following cases, viz.—

(a) Where in the opinion of the Public Trustee the income of the trust property is not liable to serious fluctuation, or

(b) Where the income of the trust property includes rent collected by the person entitled to such income, or by any co-trustee of the Public Trustee, or by an agent appointed by such person or co-trustee,

the Public Trustee may from time to time by agreement with the person for the time being interested in such income fix an annual income fee to be paid (in lieu of the income fee payable in pursuance of the Schedule hereto) in respect in case (a) of that income, or in case (b) of that rent. Such fixed annual income fee shall be of such amount as shall appear to the Public Trustee approximately equal to the average annual income fee which, if no such fee had been fixed, would be payable in respect of the income or rent affected.

10. The Public Trustee with the approval of the Treasury (a) may agree to any mode of payment of any fee payable in pursuance of the Schedule hereto which shall seem to him just and

reasonable, and (b) in any case of doubt or difficulty may compromise or otherwise settle any dispute which may arise as to his right to any such fee or as to the mode of calculation or the amount thereof.

11. For the purposes of the Schedule hereto—(a) the value of any property (other than cash) shall be the price which in the opinion of the Public Trustee such property would fetch if sold in the open market and (b) income shall mean the gross income of the trust property without deduction of income tax or other outgoings.

12. For the purpose of ascertaining the amount of any capital fee payable in pursuance of the Schedule hereto, the date of the acceptance of a trust shall be taken to be either the date upon which the trust is actually accepted or such day not more than two months earlier or later than that date, as the Public Trustee may determine in each particular case.

13. For the purpose of ascertaining the rate at which any acceptance fee or withdrawal fee is to be charged in pursuance of the Schedule hereto, and the amount of such fee, the sum of money or value in respect of which such fee is chargeable shall be taken to be that multiple of £10 which shall be nearest to the actual amount of such sum of money or value.

14. The Public Trustee (Fees) Order, 1912,¹ is hereby rescinded, but without prejudice to any special arrangement or undertaking in force at the date on which this Order comes into operation with respect to any fee chargeable in respect of any trust or estate then in course of administration by the Public Trustee.

15. This Order may be cited as “The Public Trustee (Fees) Order, 1920,” and shall come into operation on the first day of April, 1920.

SCHEDULE

Division I.—Capital Fees

HEAD A

In respect of the Duties of the Public Trustee, acting (whether directly or as agent or attorney) in any of the following capacities, viz.—

- (i) as executor or administrator ;
- (ii) as ordinary trustee (except in cases provided for under Heads C or D) ;

¹ S. R. & O., 1912, No. $\frac{417}{L. 10}$.

(iii) under Section 3 of the Act.

(iv) as administrator under the Forfeiture Act, 1870.¹

1. Upon the acceptance of the trust—a fee (hereinafter referred to as an “acceptance fee”) by way of percentage upon the gross capital value of the trust property at the date of such acceptance at such of the rates mentioned in the following table as shall be applicable—

Capacity of Public Trustee	Rate per cent upon gross capital value.				
	In respect of the first £5,000.	In respect of any excess over £5,000 up to a total of £25,000.	In respect of any excess over £25,000 up to a total of £50,000.	In respect of any excess over £50,000 up to a total of £75,000.	In respect of any excess over £75,000.
	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.
1. Acting under a declaration of trust in favour of one beneficiary only.	7 6	5 -	2 6	9	3
2. Acting as original ordinary trustee of a trust instrument <i>inter vivos</i> (except in cases falling under paragraph 1 of this Table).	1 15 -	10 -	5 -	1 3	6
3. Acting as original ordinary trustee of a Will (where not executor or administrator) or as substituted or additional ordinary trustee of any trust instrument.	1 - -	15 -	10 -	2 6	1 3
4. Acting as (i) executor or administrator only or (ii) as executor or administrator and also as original trustee of a Will or (iii) under Section 3 of the Act or (iv) as administrator of the property of a convict under the Forfeiture Act, 1870.	1 10 -	1 - -	15 -	5 -	2 6

¹ 33-4 V. c. 23.

2. Upon the withdrawal (whether upon distribution amongst the beneficiaries or otherwise) of any capital from the trust property—a fee (hereinafter referred to as a “withdrawal fee”) by way of percentage upon the gross capital value of the property withdrawn at such one of the following rates as shall be applicable, viz.—

(2) Where the Public Trustee is acting under a declaration of trust in favour of one beneficiary only—five shillings per cent.

(b) In other cases—ten shillings per cent.

3. Provided as follows—

(a) The amount of the acceptance fee charged in respect of any trust shall not be less than the sums following—

where the gross capital value of the trust property					
does not exceed £500	£	10			
where such value exceeds £500	£	15			

(b) No acceptance fee shall be payable in respect of property comprised in such a declaration as is referred to in Clause 2 (a) of this Head in a case where that property is already comprised in a trust in course of administration by the Public Trustee.

(c) Where upon the determination of the trusts declared by such a declaration as is last referred to the Public Trustee accepts a new trust comprising property to which that declaration relates he shall, in determining the amount of the fee payable upon such acceptance (and so far as that fee will extend), give credit for the amount of any fee paid upon the withdrawal of that property from the trust property comprised in the declaration.

(d) No acceptance fee or withdrawal fee shall be payable in respect of an annuity purchased in or transferred into the name of the Public Trustee by any other person.

(e) The aggregate of all withdrawal fees charged in respect of the trust property subject to any one trust shall not exceed £1,000 in trusts other than declarations of trust in favour of one beneficiary only and in such last-mentioned trusts shall not exceed £500.

HEAD B

In respect of the duties of the Public Trustee, acting as Custodian Trustee only of any trust.

1. Upon the acceptance of the trust—an acceptance fee by way of percentage upon the gross capital value of the trust property at the date of such acceptance at such of the rates mentioned in the following table as shall be applicable.

Capacity of Public Trustee	Rate per cent upon gross capital value.				
	In respect of the first £5,000.	In respect of any excess over £5,000 up to a total of £25,000.	In respect of any excess over £25,000 up to a total of £50,000.	In respect of any excess over £50,000 up to a total of £75,000.	In respect of any excess over £75,000.
	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.
1. Where appointed upon the original creation of a trust effected by instrument <i>inter vivos</i> .	7 6	5 -	2 6	9	3
2. Where appointed (i) in respect of a previously existing trust effected by instrument <i>inter vivos</i> or (ii) (whether originally or otherwise) in respect of a trust effected by Will (except where he has acted as executor or administrator).	10 -	7 6	5 -	1 3	9

2. Upon the withdrawal (whether upon distribution amongst the beneficiaries or otherwise) of any capital from the trust property—a withdrawal fee by way of percentage at the rate of 5s. per cent upon the gross capital of the property withdrawn, but so that the aggregate of all withdrawal fees charged in respect of the trust property subject to any one trust shall not exceed £500.

HEAD C

In respect of the duties of the Public Trustee acting as trustee of an instrument whereby land is settled in strict settlement.

1. Upon acceptance of the trust—

(a) In respect of the settled land—an acceptance fee of £20.

(b) In respect of any money, or personal property liable to be converted into money to be laid out in the purchase of land to be settled—an acceptance fee by way of percentage upon that money, or upon the gross capital value of that property, at such of the rates mentioned in paragraph 2 or paragraph 3 of the Table set forth under Head A as would apply if the Public Trustee were acting in a capacity mentioned in either of the said paragraphs, but so that where at the date of acceptance no land

is held under the instrument the amount of such acceptance fee shall not be less than the sums following, viz.—

Where the aggregate of the money and the gross capital value of the property does not exceed £500	. . . . .	£10
Where such aggregate exceeds £500	. . . . .	£15

2. Upon the receipt of any capital money arising from the sale of any settled land—an acceptance fee by way of percentage upon that money at such of the rates mentioned in paragraph 2 or paragraph 3 of the Table set forth under Head A as would be applicable if the Public Trustee were acting in a capacity mentioned in either of those paragraphs and if that money were aggregated with the amount of gross capital value of any money or personal property in respect of which any fee has previously been paid or become payable under Clause 1 of this Head or under this clause.

3. Upon the withdrawal from the trust (whether upon distribution amongst the beneficiaries or otherwise) of any capital money or other property—a withdrawal fee by way of percentage at the rate of ten shillings per cent. upon the money or the gross capital value of the property withdrawn, but so that the aggregate of all withdrawal fees charged in respect of the trust property subject to any one trust shall not exceed £1,000.

4. Provided that a resettlement of the settled land shall not be deemed to be a withdrawal of property or moneys from the trust where the Public Trustee is trustee of such resettlement.

HEAD D

In respect of the duties of the Public Trustee acting only as trustee of a settlement for the purposes of the Settled Land Acts 1882 to 1890.

1. Upon the acceptance of the trust—an acceptance fee of £1 in respect of the settled land.

2. Upon the receipt (whether on the acceptance of the trust or subsequently) of any money liable to be laid out in the purchase of land to be settled and upon the withdrawal for any purposes of the settlement of any capital money—the same fees as are chargeable under Clauses 2 and 3 of Head C in the like cases and so that Clause 4 of that Head shall apply.

Division II.—Income Fees

In respect of the duties of the Public Trustee acting in any of the capacities mentioned in this Division.

1. Where the Public Trustee is acting in any of the capacities mentioned under Head A or Head B of Division I—an income

fee by way of percentage upon the annual income of the trust property at such of the following rates as shall be applicable, viz.—

- (a) In respect of the first £500 of such income . . . £2 per cent.
- (b) In respect of any excess over £500 and up to £2,000 . . . £1 per cent.
- (c) In respect of any excess over £2,000 . . . 10s. per cent.

2. Where the Public Trustee is acting in the capacity mentioned in Head C of Division I—an income fee by way of percentage upon the annual income of the settled land at such rate (not being higher than £1 per cent) as the Public Trustee having regard to the time and trouble involved may from time to time determine in each particular case.

3. Where the Public Trustee is acting in any capacity mentioned in Head C or Head D of Division I—an income fee by way of percentage upon the annual income of any investments of capital money or of any other property not being land at such of the rates mentioned in Clause 1 of this Division as shall be applicable.

4. Provided as follows (as to any of the above income fees)—

(a) Where income is paid direct to the person entitled, or to his Bank, or is collected by such person, the rate shall not be higher than £1 per cent in respect of that income up to £2,000 or 10s. per cent in respect of any excess over £2,000 and

(b) Where in pursuance of a personal covenant in that behalf contained in a trust instrument income is paid direct to the person entitled, or to his bank, without any intervention on the part of the Public Trustee no income fee shall be charged except in a case where the covenant is made with the Public Trustee, and in such last-mentioned case the income fee shall not be charged in respect of any part of that income at a higher rate than 10s. per cent and

(c) No income fee shall be charged where the income otherwise chargeable is less than £2 per annum: save as aforesaid the minimum income fee shall be 1s.

Division III.—Management Fees

In respect of the duties of the Public Trustee acting in any of the capacities mentioned in Division I.

1. Upon any investment by the Public Trustee by way of mortgage of, or charge on, property—a fee, payable out of the capital of the trust property, at the rate of 10s. per cent upon the amount of the money advanced.

2. Upon the sale or purchase by the Public Trustee of stocks, funds, shares or securities—a fee, payable in like manner as the expenses of the sale or purchase, by way of percentage upon the

amount of the purchase money at such of the following rates as shall be applicable, viz.—

(a) Where the stocks, funds, shares or securities sold or purchased are of a nature authorized by any statute for the investment of trust funds—3s. per cent.

(b) Where the stocks, funds, shares or securities sold or purchased are not of such a nature—6s. per cent.

Such fee to be in addition to the amount of any commission refunded by any broker acting in the sale or purchase and retained by the Public Trustee, and the minimum fee for any such sale or purchase to be 2s. 6d.

3. Upon the sale or purchase by the Public Trustee of any land, livestock or timber, a fee, payable out of the capital of the trust property, at the rate of 10s. per cent upon the amount of the purchase money.

4. Upon the raising by the Public Trustee of any money by mortgage of or charge upon any trust property—a fee by way of percentage at the rate of 10s. per cent upon and payable out of the amount so raised.

5. Upon the sale by the Public Trustee of a business—a fee payable out of the purchase money by way of percentage upon the amount thereof at such of the following rates as may be applicable viz.—

(a) In respect of purchase money for goodwill—£5 per cent.

(b) In respect of purchase money for any assets (not being land, livestock, timber, or goodwill)—£1 per cent.

6. Provided that where the Public Trustee is trustee for the purposes of the Settled Land Acts only, and is acting under the direction of the tenant for life, or where the Public Trustee is Custodian Trustee only, any fee payable under any of the clauses 1 to 4 inclusive of this division shall be reduced by one-half; and where the Public Trustee is Custodian Trustee only, no fee shall be payable under clause 5 thereof.

7. Upon any special visit made on behalf of the Public Trustee to any beneficiary under a trust for any purpose relating to the trust or the duties of the Public Trustee thereunder—such fee not exceeding one guinea and payable out of the income or the capital of the trust property as the Public Trustee may determine in each particular case.

8. Upon the inspection of any land or buildings—such fee (not exceeding 5s. per cent on the gross capital value of the property inspected) as the Public Trustee having regard to the time and trouble involved may determine in each particular case, such fee to be payable out of the income or the capital of the trust property as he may think proper.

9. In respect of the collection of the rents of any land or buildings—

(a) Where such rents are collected by an agent acting under the Public Trustee—a fee by way of percentage at the rate of 5s. per cent on the amount of the gross rents collected.

(b) Where such rents are collected by the Public Trustee—a fee equal to the fee which might have been charged for such collection by an agent, but not exceeding the fee chargeable according to the scale for the time being authorized by the Surveyors' Institute.

Such fees to be payable out of the rents so collected.

10. Upon the recovery by the Public Trustee of any sum in respect of income tax overpaid upon the income of any trust property—a fee by way of percentage on and payable out of the sum recovered at such rate not exceeding £10 per cent as the Public Trustee may determine in each particular case.

Division IV.—Fees in Compensation Cases

In respect of the duties of the Public Trustee acting as Trustee of any money or damages paid under the Rules of the Supreme Court, Order 22, Rule 15.

An inclusive fee of £15 per cent. on the amount of such money or damages and payable thereout to cover all such duties, but so that the fee payable in any case shall not exceed £75.

Division V.—Audit Fees

In respect of the duties of the Public Trustee under Section 13 of the Act.

Upon the performance of all duties under that section in any particular case, such inclusive fee, not being less than 10s. or more than £10 as the Public Trustee shall determine, regard being had to the time and trouble involved, the value of the estate, and the other circumstances.

Division VI.—Registration and Enquiry Fees

1. For the entry in the appropriate register or book of a notice received of any dealing with a beneficial interest in trust property, or of the exercise or release of any power relating to the trust or estate—a fee of five shillings (such fee to cover any necessary acknowledgment of the notice).

2. For any replies or statements furnished for the purpose of any dealing (actual or intended) with a beneficial interest in trust property—a fee not exceeding one guinea in respect of any such dealing.

HINDE PALMER'S ACT, 1869

(32 & 33 Vict., c. 46.)

[2nd August, 1869.]

1. In the administration of the estate of every person who shall die on or after the first day of January, 1870, no debt or liability of such person shall be entitled to any priority or preference by reason merely that the same is secured by or arises under a bond, deed, or other instrument under sale, or is otherwise made or constituted a specialty debt ; but all the creditors of such person, as well specialty as simple contract, shall be treated as standing in equal degree, and be paid accordingly out of the assets of such deceased person, whether such assets are legal or equitable, any statute or other law to the contrary notwithstanding : Provided always that this Act shall not prejudice or affect any lien, charge, or other security which any creditor may hold or be entitled to for the payment of his debt.

Extent of Act. 2. This Act shall not extend to Scotland.

THE APPORTIONMENT ACT, 1870

(33 & 34 Vict., c. 35.)

[1st August, 1870.]

2. From and after the passing of this Act all Rents, Annuities, Dividends, and other periodical payments in the nature of income (whether reserved or made payable under an instrument in writing or otherwise) shall, like interest on money lent, be considered as accruing from day to day, and shall be apportionable in respect of time accordingly.

The Act apportions liabilities as well as rights. Where a Company in liquidation continued in the possession of leasehold premises for the purpose of carrying on their business, it was *held* that the rent of the premises must be apportioned under the Act.—*In re South Kensington Co-operative Stores, Ltd.* (1871), 17 Ch. D. 161.

The word "Dividends" includes payments by way of bonus or surplus profits to the shareholders of a Public Company, even

though such payments may be only occasional and not strictly periodical.—*In re Griffith; Carr v. Griffith*, 12 Ch. D. 655.

The Act does not apply to rent, annuities, dividends, and other payments in the nature of income, which have accrued due before the happening of the event by reason of which it is proposed to apply the Act; the Act, therefore, does not apply to rent payable in advance.—*Ellis v. Rowbotham* [1900], 1 Q.B. 741.

The term "Private Company" in Section 121 of the Companies (Consolidation) Act, 1908, is only a convenient way of describing for the purposes of the Act, a particular class of Companies subject to the Act; and a Company incorporated under the Companies Acts either before or after that Act, and so constituted, either originally or by subsequent alteration of its articles, as to be a Private Company within the meaning of that expression in Section 121 of the Act, is nevertheless a "Public Company" for the purposes of the Apportionment Act, 1870.

A Company, incorporated in 1899 under the Companies Acts, 1862 to 1898, passed special resolutions in 1907 altering its Articles of Association so as to be a Private Company as defined by Section 37 of the Companies Act, 1907, which enactment is repealed and reproduced by the Companies (Consolidation) Act, 1908, Section 121. G. and his son held ordinary shares in the Company. One of the Articles of the Company provided that, on the death of G., his son should have the right to purchase so many ordinary shares of G. as would make up the son's holding to 667 ordinary shares; and another Article provided that H. should have the right to purchase so many of G.'s ordinary shares as the son should not purchase under the previous Article.

G. died and by his will bequeathed so many of his ordinary shares in the Company to his son as would make up the son's holding to 667 shares, but if any provision in the Articles of the Company might so operate as to prevent the said specific bequest taking effect then in lieu thereof he bequeathed to his son a legacy equal in amount to the purchase money of so many of his (the testator's) ordinary shares as the son should be entitled to purchase under the aforesaid Article. The Company paid substantial dividends—

Held, that the bequest to the son did not operate as a specific gift of shares but as a gift of money to buy the shares, and therefore that the Apportionment Act, 1870, did not apply to the accruing dividend on the shares.—*In re White; Theobald v. White* [1913], 1 Ch. 231.

A Testator specifically bequeathed cumulative preference shares in a company to his son R, and settled his residuary estate upon trust for all his children. At his death in 1905 the dividends on

the shares were in arrear, and it was not until 1907 that there were any profits available for dividend. In that year an interim dividend was declared sufficient in amount to satisfy all the arrears upon the preference shares—

Held, that the dividend declared in 1907 must be treated as being in respect of that year only; that the Apportionment Act, 1870, did not apply; and consequently that the whole of the dividend belonged to R.—*In re Wakley; Wakley v. Vachell* [1920] 2 Ch. 205.

5. In the construction of this Act—

**Interpretation
of terms.**

The word “Rents” includes Rent service, Rentcharge, and Rent seck, and also Tithes and all periodical payments or renderings in lieu of or in the nature of Rent or Tithe.

The word “Annuities” includes salaries and pensions.

The word “Dividends” includes (besides Dividends strictly so called) all payments made by the name of dividend, bonus, or otherwise out of the revenue of trading or other Public Companies, divisible between all or any of the members of such respective Companies, whether such payments shall be usually made or declared at any fixed times or otherwise; and all such divisible revenue shall, for the purposes of this Act, be deemed to have accrued by equal daily increment during and within the period for or in respect of which the payment of the same revenue shall be declared or expressed to be made; but the said word “Dividend” does not include payments in the nature of a return or reimbursement of capital.

Stock in a public Company forming part of a testator's residuary estate was settled upon trust for A for life, and after her death “to pay, transfer, and assign my residuary estate, and the stocks, funds, and securities upon which the same shall be invested unto and amongst” certain beneficiaries. After the death of the tenant for life the stock was sold “cum dividend” under an order of the Court for the purpose of distribution. This order was made in the absence of the legal personal representatives of the tenant for life. After the sale a dividend was declared and received by the purchaser in respect of profits, a portion of which had been earned prior to the death of the tenant for life.

Held, that the estate of the tenant for life was not entitled under the Apportionment Act, 1870, to be paid out of the purchase money of the stock anything in respect of the dividend; but,

inasmuch as if the trust had been strictly carried out in accordance with the terms of the will, by transferring the investments to the beneficiaries, the representatives of the tenant for life would have been in a position, either directly or through the trustees, to obtain payment of an apportioned part of the dividend, their claim ought under the special circumstances of the case to be acceded to.—*Bulkeley v. Stephens* [1896], 2 Ch. 241.

Act not to
apply to
Policies of
Assurance ;

6. Nothing in this Act contained shall render apportionable any annual sums made payable in Policies of Assurance of any description.

nor where
stipulation
made to the
contrary.

7. The provisions of this Act shall not extend to any case in which it is or shall be expressly stipulated that no apportionment shall take place.

Every Company registered under the Companies Act, 1862, or the Companies (Consolidation) Act, 1908, is a "Public Company" within the meaning of the term in this Act.

A bequest of shares in a limited Company, coupled with a declaration that the shares so bequeathed shall carry the dividend accruing thereon at the testator's death, operates as an exclusion of the Apportionment Act.

A Testator bequeathed certain shares in a Limited Company to Trustees upon trust to sell, with a power of postponement, and stand possessed of the proceeds and the shares remaining unsold upon trust to receive the annual produce thereof and hold the same in trust for the Testator's children and remoter issue in succession, and declared that every share bequeathed by his will should carry the dividend accruing thereon at his death. The dividends were payable annually. It was held by the Court of Appeal that the Trustees took the whole of the dividend for the year in which the Testator died without apportionment, and that such dividend was payable as income to the tenants for life under the will.—*In re Lysaght ; Lysaght v. Lysaght* [1898], 1 Ch. 115.

A Testator directed the whole of the income of stocks, out of which his wife was entitled to an annuity, should be paid to her during widowhood. It was held that he had expressly stipulated, within the meaning of Section 7, that the Apportionment Act should not apply.—*In re Meredith ; Stone v. Meredith* [1898], W.N. 48 (2).

The Act is not excluded by a power to postpone a trust for sale coupled with a direction that pending sale "the whole of the income of property actually producing income" shall be applied as from the testator's death as income.—*In re Edwards ; Newbury v. Edwards* [1918], 1 Ch. 142.

THE FINANCE ACT, 1894
(57 & 58 Vict., c. 30.)

[31st July, 1894.]

1. In the case of every person dying after the commencement of this part of this Act, there shall, save as hereinafter expressly provided, be levied and paid, upon the principal value ascertained as hereinafter provided, of all property, real or personal, settled or not settled, which passes on the death of such person, a duty, called "Estate Duty," at the graduated rates hereinafter mentioned, and the existing duties mentioned in the First Schedule to this Act shall not be levied in respect of property chargeable with such Estate Duty.

2.—(1) Property passing on the death of the deceased shall be deemed to include the property following (that is to say)—

What Property
is deemed
to pass.

(a) Property of which the deceased was at the time of his death competent to dispose ;

(b) Property in which the deceased or any other person had an interest ceasing on the death of the deceased, to the extent to which a benefit accrues or arises by the cesser of such interest ; but exclusive of property the interest in which of the deceased or other person was only an interest as holder of an office, or recipient of the benefits of a charity, or as a corporation sole ;

(c) Property which would be required on the death of the deceased to be included in an account under Section thirty-eight of the Customs and Inland Revenue Act, 1881, as amended by Section eleven of the Customs and Inland Revenue Act, 1889, if those sections were herein enacted, and extended to real property as well as personal property, and the words "voluntary" and "voluntarily," and a reference to a "volunteer," were omitted therefrom ; and

(d) Any annuity or other interest purchased or provided by the deceased, either by himself alone or in concert, or by arrangement with any other person, to the extent of

the beneficial interest accruing or arising by survivorship or otherwise on the death of the deceased.

By Section 16 of the Finance Act, 1896, the Estate Duty payable under this sub-section may be paid by four equal yearly instalments.

(2) Property passing on the death of the deceased when situate out of the United Kingdom shall be included only if, under the law in force before the passing of this Act, Legacy or Succession Duty is payable in respect thereof, or would be so payable but for the relationship of the person to whom it passes.

(3) Property passing on the death of the deceased shall not be deemed to include property held by the deceased as Trustee for another person under a disposition not made by the deceased, or under a disposition made by the deceased more than twelve months before his death, where possession and enjoyment of the property was *bonâ fide* assumed by the beneficiary immediately upon the creation of the trust, and thenceforward retained, to the entire exclusion of the deceased or of any benefit to him, by contract or otherwise.

3.—(1) Estate Duty shall not be payable in respect of property passing on the death of the deceased by reason only of a *bonâ fide* purchase from the person under whose disposition the property passes, nor in respect of the falling into possession of the reversion on any lease for lives, nor in respect of the determination of any annuity for lives, where such purchase was made, or such lease or annuity granted, for full consideration in money or money's worth paid to the vendor or grantor for his own use or benefit, or, in the case of a lease for the use and benefit of any person for whom the grantor was a Trustee.

Exception for
transactions
for Money
consideration.

(2) Where any such purchase was made, or lease or annuity granted, for partial consideration in money or money's worth, paid to the vendor or grantor for his own use or benefit, or in the case of a lease for the use or benefit of any person for whom the grantor was a Trustee, the value of the consideration shall be allowed as a deduction from the value of the property for the purpose of Estate Duty.

4. For determining the rate of Estate Duty to be paid on any property passing on the death of the deceased, all property so passing in respect to which Estate Duty is leviable shall be aggregated so as to form one estate, and the duty shall be levied at the proper graduated rate on the principal value thereof:

Aggregation
of Property
to form one
Estate for
purpose of
Duty.

Provided that any property so passing, in which the deceased never had an interest, shall not be aggregated with any other property, but shall be an estate by itself, and the Estate Duty shall be levied at the proper graduated rate on the principal value thereof.

(2) If Estate Duty has already been paid in respect of any settled property since the date of the settlement, the Estate Duty shall not, nor shall any of the duties mentioned in the fifth paragraph of the First Schedule to this Act, be payable in respect thereof until the death of a person who was at the time of his death, or had been at any time during the continuance of the settlement, competent to dispose of such property.

Settled
Property.

(3) In the case of settled property, where the interest of any person under the settlement fails or determines by reason of his death before it becomes an interest in possession, and subsequent limitations under the settlement continue to subsist, the property shall not be deemed to pass on his death.

(5) Where any lands or chattels are so settled, whether by Act of Parliament or Royal grant, that no one of the persons successively in possession thereof is capable of alienating the same, whether his interest is in law a tenancy for life or a tenancy in tail, the provisions of this Act with respect to settled property shall not apply, and the property passing on the death of any person in possession of the lands and chattels shall be the interest of the successor in the lands and chattels, and such interest shall be valued, for the purpose of Estate Duty, in like manner as for the purpose of Succession Duty.

6.—(1) Estate Duty shall be a Stamp Duty, collected and recovered as hereinafter mentioned.

Collection and
Recovery of
Estate Duty.

(2) The executor of the deceased shall pay the Estate Duty in respect of all personal property (wheresoever situate) of which the deceased was competent to dispose of at his death on delivering the Inland Revenue Affidavit, and may pay in like manner the Estate Duty in respect of any other property passing on such death, which by virtue of any testamentary disposition of the deceased is under the control of the executor, or in the case of property not under his control if the persons accountable for the duty in respect thereof request him to make such payment.

(3) Where the executor does not know the amount or value of any property which has passed on the death, he may state in the Inland Revenue Affidavit that such property exists, but he does not know the amount or value thereof, and that he undertakes as soon as the amount and value are ascertained, to bring in an account thereof, and to pay both the duty for which he is or may be liable, and any further duty payable by reason thereof for which he is or may be liable in respect of the other property mentioned in the affidavit.

(4) Estate Duty, so far as not paid by the executor, shall be collected upon an account setting forth the particulars of the property, and delivered to the Commissioners within six months after the death by the person accountable for the duty, or within such further time as the Commissioners may allow.

(5) Every estate shall include all income accrued upon the property included therein down to and outstanding at the date of the death of the deceased.

Where necessary, the income must be apportioned to the day of the death.

(6) Interest at the rate of three per centum per annum on the Estate Duty shall be paid from the date of the death up to the date of the delivery of the Inland Revenue Affidavit or account, or the expiration of six months after the death, whichever first happens.

(7) The duty which is to be collected upon an Inland Revenue Affidavit or account shall be due on the delivery thereof, or on the expiration of six months from the death, whichever first happens.

(8) Provided that the duty due upon an account of real property may, at the option of the person delivering the account, be paid by eight equal yearly instalments, or sixteen half-yearly instalments, with interest at the rate of three per centum per annum from the date at which the first instalment is due, and the first instalment shall be due at the expiration of twelve months from the death, and the interest on the unpaid portion of the duty shall be added to each instalment, and paid accordingly; but the duty for the time being unpaid, with such interest to the date of payment, may be paid at any time, and in case the property is sold shall be paid on completion of the sale, and if not so paid shall be duty in arrear.

7.—(1) In determining the value of an estate for the purpose of Estate Duty, allowance shall be made for **Value of Property.** reasonable funeral expenses, and for debts and incumbrances; but an allowance shall not be made—

(a) for debts incurred by the deceased, or incumbrances created by a disposition made by the deceased, unless such debts or incumbrances were incurred or created *bonâ fide* for full consideration in money or money's worth, wholly for the deceased's own use and benefit, and take effect out of his interest; nor

(b) for any debt in respect whereof there is a right to reimbursement from any other estate or person, unless such reimbursement cannot be obtained; nor

(c) more than once for the same debt or incumbrance charged upon different portions of the estate; and any debt or incumbrance for which an allowance is made shall be deducted from the value of the land or other subjects of property liable thereto.

(2) An allowance shall not be made in the first instance for debts due from the deceased to persons resident out of

the United Kingdom (unless contracted to be paid in the United Kingdom, or charged on property situate within the United Kingdom) except out of the value of any personal property of the deceased situate out of the United Kingdom in respect of which Estate Duty is paid ; and there shall be no repayment of Estate Duty in respect of any such debts except to the extent to which it is shown to the satisfaction of the Commissioners that the personal property of the deceased situate in the foreign country or British possession in which the person to whom such debts are due resides is insufficient for their payment.

(3) Where the Commissioners are satisfied that any additional expense in administering or in realizing property has been incurred by reason of the property being situate out of the United Kingdom, they may make an allowance from the value of the property on account of such expense not exceeding in any case five per centum on the value of the property.

(4) Where any property passing on the death of the deceased is situate in a foreign country, and the Commissioners are satisfied that by reason of such death any duty is payable in that foreign country in respect of that property, they shall make an allowance of the amount of that duty from the value of the property.

(5) The principal value of any property shall be estimated to be the price which, in the opinion of the Commissioners, such property would fetch if sold in the open market at the time of the death of the deceased :

Provided that, in the case of any agricultural property, where no part of the principal value is due to the expectation of an increased income from such property, the principal value shall not exceed twenty-five times the annual value as assessed under Schedule A of the Income Tax Acts, after making such deductions as have not been allowed in that assessment, and are allowed under the Succession Duty Act, 1853, and making a deduction for expenses of management not exceeding five per centum of the annual value so assessed.

(6) Where an estate includes an interest in expectancy,

Estate Duty in respect of that interest shall be paid, at the option of the person accountable for the duty, either with the duty in respect of the rest of the estate or when the interest falls into possession, and if the duty is not paid with the Estate Duty in respect of the rest of the estate, then—

(a) for the purpose of determining the rate of Estate Duty in respect of the rest of the estate, the value of the interest shall be its value at the date of the death of the deceased; and

(b) the rate of Estate Duty in respect of the interest when it falls into possession shall be calculated according to its value when it falls into possession, together with the value of the rest of the estate as previously ascertained.

(7) The value of the benefit accruing or arising from the cesser of an interest ceasing on the death of the deceased shall—

(a) if the interest extended to the whole income of the property, be the principal value of that property; and

(b) if the interest extended to less than the whole income of the property, be the principal value of an addition to the property equal to the income to which the interest extended.

(8) Subject to the provisions of this Act, the value of any property for the purpose of Estate Duty shall be ascertained by the Commissioners in such manner and by such means as they think fit, and, if they authorize a person to inspect any property and report to them the value thereof for the purposes of this Act, the person having the custody or possession of that property shall permit the person so authorized to inspect it at such reasonable times as the Commissioners consider necessary.

(9) Where the Commissioners require a valuation to be made by a person named by them, the reasonable costs of such valuation shall be defrayed by the Commissioners.

(10) Property passing on any death shall not be aggregated more than once, nor shall Estate Duty in respect thereof be more than once levied on the same death.

8.—(3) The executor of the deceased shall, to the best of his knowledge and belief, specify in appropriate accounts, annexed to the Inland Revenue Affidavit, all the property in respect of which Estate Duty is payable upon the death of the deceased, and shall be accountable for the Estate Duty in respect of all personal property wheresoever situate of which the deceased was competent to dispose at his death, but shall not be liable for any duty in excess of the assets which he has received as executor, or might, but for his own neglect or default, have received.

Supplemental provisions as to collection, recovery, and repayment of and exemption from Estate Duty.

(7) Estate Duty shall, in the first instance, be calculated at the appropriate rate according to the value of the estate as set forth in the Inland Revenue Affidavit or account delivered; but if afterwards it appears that for any reason too little duty has been paid, the additional duty shall, unless a certificate of discharge has been delivered under this Act, be payable, and be treated as duty in arrear.

(12) Where it is proved to the satisfaction of the Commissioners that too much Estate Duty has been paid, the excess shall be repaid by them, and in cases where the over-payment was due to over-valuation by the Commissioners, with interest at three per centum per annum.

13.—(1) Where, by reason of the number of deaths on which property has passed, or of the complicated nature of the interests of different persons in property which has passed on death, or from any other cause, it is difficult to ascertain exactly the amount of death duties, or any of them, payable in respect of any property, or any interest therein, or so to ascertain the same without undue expense in proportion to the value of the property or interest, the Commissioners, on the application of any person accountable for any duty thereon, and upon his giving to them all the information in his power respecting the amount of the property and the several interests therein, and other circumstances of the case, may by way of composition for all or any of the death duties

Powers to accept Composition for Death Duties.

payable in respect of the property, or interest, and the various interests therein, or any of them, assess such sum on the value of the property, or interest, as having regard to the circumstances appears proper, and may accept payment of the sum so assessed in full discharge of all claims for death duties in respect of such property or interest, and shall give a certificate of discharge accordingly.

15.—(1) Estate Duty shall not be payable in respect of a single annuity not exceeding twenty-five pounds purchased or provided by the deceased, either by himself alone or in concert or arrangement with any other person, for the life of himself and of some other person and the survivor of them, or to arise on his own death in favour of some other person ; and, if in any case there is more than one such annuity, the annuity first granted shall be alone entitled to the exemption under this section.

Exemptions
from Estate
Duty.

(2) It shall be lawful for the Treasury to remit the Estate Duty, or any other duty leviable on or with reference to death, in respect of any such pictures, prints, books, manuscripts, works of art, or scientific collections as appear to the Treasury to be of national, scientific, or historic interest, and to be given or bequeathed for national purposes, or to any University, or to any County Council or Municipal Corporation, and no property, the duty in respect of which is so remitted shall be aggregated with any other property for the purpose of fixing the rate of Estate Duty.

(3) Estate Duty shall not be payable in respect of any pension or annuity payable by the Government of British India to the widow or child of any deceased officer of such Government, notwithstanding that the deceased contributed during his lifetime to any fund out of which such pension or annuity is paid.

(4) Estate Duty shall not be payable in respect of any advowson or church patronage which would have been free from Succession Duty under Section twenty-four of the Succession Duty Act, 1853.

The rates of Estate Duty payable in the case of persons dying after the 15th August, 1914, will be found in the First Schedule to the Finance Act, 1914 (p. 327). For persons dying after 31st July, 1919, the scale of Estate Duty is that given in the Finance Act, 1919 (p. 329).

The rate of the Settlement Estate Duty where the property is settled shall be one per centum :

Provided that for any fractional part of ten pounds, over ten pounds or any multiple thereof, the Estate Duty and the Settlement Estate Duty shall be payable at the rate per centum for the full sum of ten pounds.

18.—(1) The value for the purpose of Succession Duty of a succession to real property, arising on the death of a deceased person, shall, where the successor is competent to dispose of the property, be the principal value of the property, after deducting the Estate Duty payable in respect thereof on the said death, and the expenses, if any, properly incurred of raising and paying the same ; and the duty shall be a charge on the property, and shall be payable by the same instalments as are authorized by this Act for Estate Duty on real property, with interest at the rate of three per centum per annum ; and the first instalment shall be payable, and the interest shall begin to run at the expiration of twelve months after the date on which the successor became entitled in possession to his succession, or to the receipt of the income and profit thereof ; and after the expiration of the said twelve-months the provisions with respect to discount shall not apply.

(2) The principal value of real property for the purpose of Succession Duty shall be ascertained in the same manner as it would be ascertained under the provisions of this Act for the purpose of Estate Duty ; and in the case of any agricultural property, where no part of the principal value is due to the expectation of an increased income from such property, the annual value for the purpose of Succession Duty shall be arrived at in the same manner as under the provisions of this part of this Act for the purpose of Estate Duty.

THE FINANCE ACT, 1896
(59 & 60 Vict., c. 28.)

[7th August, 1896.]

16. The Estate Duty in respect of any annuity or other definite annual sum, whether terminable or perpetual, referred to in Section two (1) (d) of the principal Act, **Estate Duty on Annuities.** may, at the option of the person delivering the Account, be paid by four equal yearly instalments, the first of which shall be due at the end of twelve months from the date of the death, and after the end of those twelve months interest on the unpaid portion of the duty shall be added to each instalment and paid accordingly, but the duty for the time being unpaid, with interest to the date of payment, may be paid at any time.

18.—(1) Simple interest at the rate of three per centum per annum, without deduction for income tax, shall be payable **Interest upon Estate Duty and other Death Duties.** upon all Estate Duty from the date of the death of the deceased, or, where the duty is payable by instalments, or becomes due at any date later than six months after the death, from the date at which the first instalment or the duty becomes due, and shall be recoverable in the same manner as if it were part of the duty.

(2) The foregoing provision shall apply to the interest on all death duties as defined by Section thirteen of the principal Act in like manner as if it were herein enacted and made applicable to those duties.

(3) The Commissioners of Inland Revenue may remit the interest on any of such death duties where the amount appears to them to be so small as not to repay the expense and trouble of calculation and account.

19.—(1) The Settlement Estate Duty leviable in respect of a legacy or other personal property, settled by the will of the deceased, shall (unless the will contains **Incidence of Settlement Estate Duty.** an express provision to the contrary) be payable out of the settled legacy or property in exoneration of the rest of the deceased's estate.

(2) The Settlement Estate Duty leviable in respect of any

such legacy or property shall be collected upon an account setting forth the particulars of the legacy or property, and delivered to the Commissioners by the executor within six months after the death, or within such further time as the Commissioners may allow.

THE FINANCE ACT, 1914
(4 & 5 George V, c. 10.)

[31st July, 1914.]

PART III

Death Duties

12. The scale set out in the First Schedule to this Act shall, in the case of persons dying after the fifteenth day of August, nineteen hundred and fourteen, be substituted for the scale of rates of Estate Duty set out in the Second Schedule to the Finance (1909-10) Act, 1910, as the scale rates of Estate Duty.

13.—(1) The amount of Estate Duty payable on an estate at the rate applicable thereto under the scale of rates of duty shall, where necessary, be reduced so as not to exceed the highest amount of duty which would be payable at the next lower rate, with the addition of the amount by which the value of the estate exceeds the value on which the highest amount of duty would be so payable at the lower rate.

(2) Where the net value of the property real and personal in respect of which Estate Duty is payable on the death of the deceased, exclusive of property settled otherwise than by the will of the deceased, exceeds one thousand pounds, the amount of legacy and Succession Duty payable in respect of the property shall not exceed the amount by which the net value of the property as estimated for the purposes of Estate Duty exceeds one thousand pounds.

14. Any relief from the payment of Estate Duty given by Sub-section (2) of Section five, or by Sub-section (1) of Section twenty-one of the Finance Act, 1894 (which relate to the settled property), or by Sub-section (16) of Section twenty-three of that Act (which relates to entailed estates in Scotland) shall cease in the case of any person dying after the fifteenth day of August, nineteen hundred and fourteen, and Settlement Estate Duty shall not be levied in the case of persons dying after the eleventh day of May nineteen hundred and fourteen :

Abolition of
settlement
Estate Duty
and of relief
in respect of
settled property.

Provided that—

(a) nothing in this section shall affect the relief given by the above-mentioned provisions of the Finance Act, 1894, in cases where, before or after the passing of this Act, Estate Duty has been paid on any of the duties specified in Sub-section (1) of Section twenty-one of that Act have, either before or after the passing of this Act, been paid or are payable upon the death of one of the parties to a marriage, so far as respects the payment of Estate Duty on the death of the other party to the marriage ; and

(b) on the first occasion on which Estate Duty becomes payable in respect of any property which would not have been payable but for this Section, the amount of Settlement Estate Duty, if any, which has been paid in respect of that property, shall be allowed against the amount of Estate Duty payable on that occasion, and if it exceeds that amount, the excess shall be repaid to the estate, and in addition, a sum equal to simple interest on the said amount of Settlement Estate Duty calculated at the rate of three per cent per annum from the fifteenth day of August, nineteen hundred and fourteen, up to the date of the occasion shall be paid to the several persons or their representatives who would have been entitled to the income arising from that amount, if that amount had on the fifteenth day of August, nineteen hundred and fourteen, been added to the capital of the settled property and shall be divided amongst those persons or their representatives according to the

several interests they would have had in that income ; and

(c) Section eleven of the Finance Act, 1900, as amended by Section fifty-nine of the Finance (1909-10) Act, 1910, shall not operate on any such surrender, assurance, divesting or disposition as is mentioned in the said Section eleven made by any person between the fifteenth day of August, nineteen hundred and fourteen, and the first day of April, nineteen hundred and fifteen, so as to make any Estate Duty payable on the death of that person which would not have been payable but for this Section.

15. Where the Commissioners of Inland Revenue are satisfied that Estate Duty has become payable on any property consisting of land or a business (not being a business carried on by a Company), or any interest in land or such a business, passing upon the death of any person, and that subsequently within five years Estate Duty has again become payable on the same property or any part thereof passing on the death of the person to whom the property passed on the first death, the amount of Estate Duty payable on the second death (if that death occurs after the passing of this Act) in respect of the property so passing shall be reduced as follows—

Relief in
respect of quick
succession
where property
consists of
land or a
business.

Where the second death occurs within one year of the first death, by fifty per cent ;

Where the second death occurs within two years of the first death, by forty per cent ;

Where the second death occurs within three years of the first death, by thirty per cent ;

Where the second death occurs within four years of the first death, by twenty per cent ;

Where the second death occurs within five years of the first death, by ten per cent ;

Provided that where the value, on which the duty is payable, of the property on the second death exceeds the value, on which the duty was payable, of the property on the first death, the latter value shall be substituted for the former

for the purpose of calculating the amount of duty on which the reduction under this section is to be calculated.

16. Where an interest in expectancy within the meaning of Part I of the Finance Act, 1894, in any property has, before the eleventh day of May, nineteen hundred and fourteen, been *bonâ fide* sold or mortgaged for full consideration in money or money's worth, then no other duty on that property shall be payable by the purchaser or mortgagee when the interest falls into possession than would have been payable if this Part of this Act had not passed, and in the case of a mortgage any higher duty payable by the mortgagor shall rank as a charge subsequent to that of the mortgagee.

Protection of
Purchasers
and Mortgagees
of interests
in expectancy.
57 & 58 Vict.
c. 30.

FIRST SCHEDULE SCALE OF RATES OF ESTATE DUTY

Where the Principal Value of the Estate				Estate Duty shall be Payable at the Rate per Cent of
Exceeds	£		£	
	100	and does not exceed	500	1
"	500	"	1,000	2
"	1,000	"	5,000	3
"	5,000	"	10,000	4
"	10,000	"	20,000	5
"	20,000	"	40,000	6
"	40,000	"	60,000	7
"	60,000	"	80,000	8
"	80,000	"	100,000	9
"	100,000	"	150,000	10
"	150,000	"	200,000	11
"	200,000	"	250,000	12
"	250,000	"	300,000	13
"	300,000	"	350,000	14
"	350,000	"	400,000	15
"	400,000	"	500,000	16
"	500,000	"	600,000	17
"	600,000	"	800,000	18
"	800,000	"	1,000,000	19
"	1,000,000	.	.	.

THE FINANCE ACT, 1919
(9 & 10 George V, Ch. 32.)

[31st July, 1919.]

PART III

Death Duties

29. The scale set out in the Third Schedule to this Act shall, in the case of persons dying after the commencement of this Act, be substituted for the scale set out in the First Schedule to the Finance Act, 1914, as the scale of rates of estate duty :

**Amended Rates of
Estate Duty.**

Provided that, where an interest in expectancy within the meaning of Part I of the Finance Act, 1894, in any property has, before the thirtieth day of April nineteen hundred and nineteen been *bonâ fide* sold or mortgaged for full consideration in money or money's worth, then no other duty on that property shall be payable by the purchaser or mortgagee when the interest falls into possession than would have been payable if this Part of this Act had not passed, and in the case of a mortgage any higher duty payable by the mortgagor shall rank as a charge subsequent to that of the mortgagee.

30. Section eighteen of the Finance Act, 1896 (which determines the rate of interest on death duties) shall, in its application to interest accruing due after the commencement of this Act, have effect as though four per cent were substituted for three per cent as the rate of interest per annum.

**Interest on
Death Duties.**

31. Section fourteen of the Finance Act, 1900 (which relates to the remission of death duties in case of persons killed in war), and any enactment amending or extending that section, shall, in their application to the present war, have effect and be deemed always to have had effect as though—

**Extension of relief
from Death Duties
in case of persons
killed in the war.**

(a) three years were substituted for twelve months wherever that expression occurs ; and

(b) in the said section fourteen the expression " wounds inflicted, accident occurring or disease contracted while on active service against an enemy " included wounds

inflicted, accident occurring or disease contracted in the course of operations arising directly out of the present war, but after its termination.

THIRD SCHEDULE
SCALE OF RATES OF ESTATE DUTY

Where the Principal Value of the Estate				Estate Duty shall be Payable at the Rate per Cent of
Exceeds	£		£	
	100	and does not exceed	500	1
"	500	"	1,000	2
"	1,000	"	5,000	3
"	5,000	"	10,000	4
"	10,000	"	15,000	5
"	15,000	"	20,000	6
"	20,000	"	25,000	7
"	25,000	"	30,000	8
"	30,000	"	40,000	9
"	40,000	"	50,000	10
"	50,000	"	60,000	11
"	60,000	"	70,000	12
"	70,000	"	90,000	13
"	90,000	"	110,000	14
"	110,000	"	130,000	15
"	130,000	"	150,000	16
"	150,000	"	175,000	17
"	175,000	"	200,000	18
"	200,000	"	225,000	19
"	225,000	"	250,000	20
"	250,000	"	300,000	21
"	300,000	"	350,000	22
"	350,000	"	400,000	23
"	400,000	"	450,000	24
"	450,000	"	500,000	25
"	500,000	"	600,000	26
"	600,000	"	800,000	27
"	800,000	"	1,000,000	28
"	1,000,000	"	1,250,000	30
"	1,250,000	"	1,500,000	32
"	1,500,000	"	2,000,000	35
"	2,000,000.	.	.	40

THE INTESTATES' ESTATE ACT, 1890
(53 & 54 Vict., c. 29.)

[12th July, 1890.]

1. The real and personal estates of every man who shall die intestate after the first day of September, one thousand eight hundred and ninety, leaving a widow **Intestate's** but no issue shall, in all cases where the net **Estate not** value of such real and personal estates shall not **exceeding £500.** exceed five hundred pounds, belong to his widow absolutely and exclusively.

2. Where the net value of the real and personal estates in the preceding section mentioned shall exceed the sum of five hundred pounds, the widow of such intestate **Intestate's** shall be entitled to five hundred pounds part **Estate** thereof absolutely and exclusively, and shall **exceeding £500.** have a charge upon the whole of such real and personal estates for such five hundred pounds, with interest thereon from the date of the death of the intestate at four per centum per annum until payment.

3. As between the real and personal representatives of such intestate, such charge shall be borne and **How Charge** paid in proportion to the values of the real **to be borne.** and personal estates respectively.

4. The provision for the widow intended to be made by this Act shall be in addition and without prejudice to her interest and share in the residue of the real and personal estates of such intestate remaining after payment of the sum of five hundred pounds, in the same way as if such residue had been the whole of such intestate's real and personal estates and this Act had not been passed.

5. The net value of such real estates as aforesaid shall for the purposes of this Act be estimated in the case of a fee simple upon the basis of twenty years purchase **How Realty** of the annual value by the year at the date **to be valued.** of the death of the intestate as determined by law for the purposes of property tax, less the gross amount of any mortgage or other principal sum charged thereon, and less the value of any annuity or other periodical payment

chargeable thereon, to be valued according to the tables and rules in the Schedule annexed to the Statute sixteenth and seventeenth Victoria, chapter fifty-one, and in the case of an estate for a life or lives according to the said tables and rules.

6. The net value of such personal estate as aforesaid shall be ascertained by deducting from the gross value thereof all debts, funeral and testamentary expenses of the intestate, and all other lawful liabilities and charges to which the said personal estate shall be subject.

How
Personalty to
be valued.

The phrase "testamentary expenses" in this section is a slip in the drafting of the Act, and means expenses of letters of administration and of administration generally.—*In re Twigg's Estate; Twigg v. Black* [1892], 1 Ch. 579.

Extent of Act. 8. This Act shall not extend to Scotland.

THE TRUSTEE ACT, 1893

(56 & 57 Vict., c. 53.)

[22nd September, 1893.]

1. A Trustee may, unless expressly forbidden by the instrument (if any) creating the trust, invest any trust funds in his hands, whether at the time in a state of investment or not, in manner following, that is to say—

Authorized
Investments.

The funds of a Benefit Building Society invested in the name of the Society, or in the names of Trustees who have no power of investment independently of the Act, are not "Trust Funds" within this section.—*In re National Permanent Mutual Benefit Building Society*, 43 Ch. D. 431.

(a) In any of the Parliamentary Stocks or Public Funds or Government Securities of the United Kingdom :

"Public Securities" have been distinguished from "Government Securities."—*Sampayo v. Gould*, 12 Sim. 435.

(b) On Real or Heritable Securities in Great Britain or Ireland :

It is a breach of trust for Trustees, having the ordinary power to invest on "Real Securities," to invest on a contributory mortgage

in the absence of an express authority. — *Webb v. James*, 39 Ch. D. 660. Trustees are not justified in advancing trust moneys on a second mortgage—*Drosier v. Nelson*, W.N. 1876, 225—or on mortgages of leaseholds.—*Re Chennell*, 8 Ch. D. 492.

(c) In the Stock of the Bank of England or the Bank of Ireland :

(d) In India Three-and-a-Half per cent. Stock and India Three per cent. Stock, or in any other Capital Stock which may at any time hereafter be issued by the Secretary of State in Council of India under the authority of Act of Parliament, and charged on the revenues of India :

(e) In any Securities the interest of which is for the time being guaranteed by Parliament :

(f) In Consolidated Stock created by the Metropolitan Board of Works, or by the London County Council, or in Debenture Stock created by the Receiver for the Metropolitan Police District :

(g) In the Debenture or Rentcharge, or Guaranteed or Preference Stock or any Railway Company in Great Britain or Ireland incorporated by special Act of Parliament, and having during each of the ten years last past before the date of investment paid a dividend at the rate of not less than three per centum per annum on its ordinary stock :

See Section 2 (2) and Section 5 (3).

(h) In the Stock of any Railway or Canal Company in Great Britain or Ireland whose undertaking is leased in perpetuity or for a term of not less than two hundred years at a fixed rental to any such Railway Company as is mentioned in Sub-section (g), either alone or jointly with any other Railway Company :

(i) In the Debenture Stock of any Railway Company in India the interest on which is paid or guaranteed by the Secretary of State in Council of India :

See Section 2 (2).

(j) In the “ B ” Annuities of the Eastern Bengal, the East Indian, and the Scinde Punjaub and Delhi Railways, and any like Annuities which may at any time hereafter be created on the purchase of any other Railway by the Secretary

of State in Council of India, and charged on the revenues of India, and which may be authorized by Act of Parliament to be accepted by Trustees in lieu of any Stock held by them in the purchased Railway ; also in Deferred Annuities comprised in the Register of Holders of Annuity Class D, and Annuities comprised in the Register of Annuitants Class C, of the East Indian Railway Company :

(k) In the Stock of any Railway Company in India upon which a fixed or minimum dividend in sterling is paid or guaranteed by the Secretary of State in Council of India, or upon the capital of which the interest is so guaranteed :
See Section 2 (2).

(l) In the Debenture or Guaranteed or Preference Stock of any Company in Great Britain or Ireland, established for the supply of water for profit, and incorporated by Special Act of Parliament or by Royal Charter, and having during each of the ten years last past before the date of investment paid a dividend of not less than five pounds per centum on its Ordinary Stock.

See Section 2 (2).

(m) In nominal or inscribed Stock, issued or to be issued by the Corporation of any Municipal Borough having, according to the returns of the last census prior to the date of investment, a population exceeding fifty thousand, or by any County Council, under the authority of any Act of Parliament or Provisional Order :

See Section 2 (2).

(n) In nominal or inscribed Stock, issued or to be issued by any Commissioners incorporated by Act of Parliament for the purpose of supplying water, and having a compulsory power of levying rates over an area having, according to the returns of the last census prior to the date of investment, a population exceeding fifty thousand, provided that each of the ten years last before the date of investment the Rates levied by such Commissioners shall not have exceeded eighty per centum of the amount authorized by law to be levied :

(o) In any of the Stocks, Funds, or Securities for the time being authorized for the investment of cash under the control or subject to the order of the High Court ;

The Stocks, etc., are regulated by Order XXII, Rule 17, of Rules of the Supreme Court.

and may also from time to time vary any such investment.

2. (1) A Trustee may under the powers of this Act invest in any of the Securities mentioned or referred to in Section one of this Act, notwithstanding that the same may be redeemable, and that the price exceeds the redemption value.

Purchase at a premium of redeemable Stocks.

(2) Provided that a Trustee may not under the powers of this Act purchase at a price exceeding its redemption value any stock mentioned or referred to in Sub-sections (g), (i), (k), (l), and (m) of Section one, which is liable to be redeemed within fifteen years of the date of purchase at par or at some other fixed rate, or purchase any such Stock as is mentioned or referred to in the Sub-sections aforesaid, which is liable to be redeemed at par or at some other fixed rate, at a price exceeding fifteen per centum above par or such other fixed rate.

The restrictions mentioned in this sub-section apply to Colonial Stock. See Colonial Stock Act, 1900, Section 2.

(3) A Trustee may retain until redemption any redeemable Stock, Fund, or Security which may have been purchased in accordance with the powers of this Act.

Discretion of Trustees.

3. Every power conferred by the preceding Sections shall be exercised according to the discretion of the Trustee, but subject to any consent required by the instrument, if any, creating the Trust with respect to the investment of the Trust Funds.

The Court will not as a rule control a Trustee's discretion as to investments.—*Lee v. Young*, Q.Y. & C.C.C. 532.

4. The preceding Sections shall apply as well to Trusts created before as to Trusts created after passing of this Act, and the powers thereby conferred shall be in addition to the powers conferred by the instrument, if any, creating the Trust.

Application of preceding Sections.

5.—(1) A Trustee having power to invest in real Securities, unless expressly forbidden by the instrument creating the Trust, may invest and shall be deemed to have always had power to invest— (a) On mortgage of property held for an unexpired term of not less than two hundred years, and not subject to a reservation of rent greater than a shilling a year, or to any right of redemption or to any condition for re-entry, except for non-payment of rent; and

Enlargement of
express Powers
of Investment.

(b) On any charge, or upon mortgage of any charge,
27 & 28 Vict., made under the Improvement of Land Act,
c. 114. 1864.

(2) A Trustee having power to invest in the Mortgages or Bonds of any Railway Company or of any other description of Company may, unless the contrary is expressed in the instrument authorizing the investment, invest in the Debenture Stock of a Railway Company or such other Company as aforesaid.

(3) A Trustee having power to invest money in the Debentures or Debenture Stock of any Railway or other Company may, unless the contrary is expressed in the instrument authorizing the investment, invest in any nominal Debentures

38 & 39 Vict., or nominal Debenture Stock issued under the
c. 83. Local Loans Act, 1875.

The general statutory power of a Trustee to invest in the Debenture Stock of a certain class of Railways under Section 1 (g) of the Trustee Act, 1893, is not enlarged by this sub-section so as to enable him to invest in nominal Debentures issued under the Local Loans Act, 1875, as the sub-section is impliedly confined to the enlargement of express powers of investment.—*In re Tattersall; Topham v. Armitage* [1906], 2 Ch. 399.

(4) A Trustee having power to invest money in Securities in the Isle of Man, or in Securities of the Government of a Colony, may, unless the contrary is expressed in the instrument authorizing the investment, invest in any Securities

43 & 44 Vict., of the Government of the Isle of Man, under
c. 8. the Isle of Man Loans Act, 1880.

(5) A Trustee having a general power to invest Trust moneys in or upon the security of Shares, Stock, Mortgages, Bonds,

or Debentures of Companies incorporated by or acting under the authority of an Act of Parliament may invest in, or upon the security of, Mortgage Debentures duly issued under and in accordance with the provisions of the Mortgage
28 & 29 Vict.,
c. 78. Debenture Act, 1865.

A "Nominal Debenture" is a Debenture in which the principal sum is made payable to a person named, his Executors, Administrators, or Assigns. "Nominal Debenture Stock" is Debenture Stock in respect of which a Stock Certificate to bearer has not been issued.

6. A Trustee having power to invest in the purchase of land or on mortgage of land may invest in the purchase, or on mortgage of any land, notwithstanding the same is charged with a rent under the powers of the Public Money Drainage Acts, 1846 to 1856, or the Landed Property Improvement (Ireland) Act, 1847, or by an absolute order made under the Improvement of Land Act, 1864, unless the terms of the Trust expressly provide that the land to be purchased or taken in mortgage shall not be subject to any such prior charge.

7.—(1) A Trustee, unless authorized by the terms of his Trust, shall not apply for or hold any Certificate to bearer issued under the authority of any of the following Acts, that is to say—
Trustees not to convert
Inscribed Stock into Certificates to Bearer.

- (a) The India Stock Certificate Act, 1863 ;
- (b) The National Debt Act, 1870 ;

- (c) The Local Loans Act, 1875 ;
- (d) The Colonial Stock Act, 1877.

8.—(1) A Trustee lending money on the security of any property on which he can lawfully lend shall not be chargeable with breach of trust by reason only of the proportion borne by the amount of the Loan to the value of the property at the time when the Loan was made, provided that it appears to the Court that in making the Loan the Trustee was acting upon a report as to the value of the property made by a person whom he reasonably believed to be

Loans and Investments by Trustees not chargeable as Breaches of Trust.

an able practical surveyor or valuer instructed and employed independently of any owner of the property, whether such surveyor or valuer carried on business in the locality where the property is situate or elsewhere, and that the amount of the Loan does not exceed two equal third parts of the value of the property as stated in the report, and that the Loan was made under the advice of the surveyor or valuer expressed in the report.

(2) A Trustee lending money on security of any leasehold property shall not be chargeable with breach of trust only upon the ground that in making such Loan he dispensed either wholly or partly with the production or investigation of the lessor's title.

(3) A Trustee shall not be chargeable with breach of trust only upon the ground that in effecting the purchase of or in lending money upon the security of any property he has accepted a shorter title than the title which a purchaser is, in the absence of a special contract, entitled to require, if in the opinion of the Court the title accepted be such as a person acting with prudence and caution would have accepted.

(4) This Section applies to transfers of existing Securities as well as to new Securities, and to investments made as well before as after the commencement of this Act, except where an action or other proceeding was pending with reference thereto on the twenty-fourth day of December, one thousand eight hundred and eighty-eight.

The valuation referred to in (1) should be made for the purposes of the investment, and the Surveyor should be employed by the Trustees themselves.—*Cann v. Wilson*, 39 Ch. D. 39.

This section will not help Trustees who take hazardous Securities.—*Blyth v. Fladgate* [1891], 1 Ch. 337.

18.—(1) A Trustee may insure against loss or damage by fire any building or other insurable property to any amount (including the amount of any insurance already on foot) not exceeding three equal fourth parts of the full value of such building or property, and pay the premiums of such insurance out of the income thereof or out of the income of any other property subject to

Power to
Insure
Building.

the same Trusts, without obtaining the consent of any person who may be entitled wholly or partly to such income.

THE WAR LOAN (TRUSTEES) ACT, 1915
(5 & 6 George V, c. 56.)

[2nd July, 1915.]

1. Any Trustees who are holders of consolidated two-and-a-half per cent annuities, two-and-three-quarters per cent annuities, and two-and-a-half per cent annuities, or three-and-a-half per cent war stock or war bonds issued under the War Loan Act, 1914 (in this Act referred to as convertible securities), may borrow as provided by this Act such sums as may be requisite for the purpose of subscribing for such an amount of the loan issued under the War Loan Act, 1915, as will enable them to obtain securities issued under that Act in exchange for all or any of the convertible securities held by them and for paying the expenses of such borrowing; and any money so borrowed shall be applied in subscriptions to the loan under the War Loan Act, 1915, and in payment of such expenses.

Powers to
borrow for
the purpose
of obtaining
under the
War Loan
Act, 1915,
conversion of
securities.

4 & 5 Geo. 5,
c. 60.
5 & 6 Geo. 5,
c. 55.

Any such sums may be borrowed on the security of the convertible securities held by the Trustees and the securities obtained by them by means of subscription to the loan under the War Loan Act, 1915.

2. It is hereby declared that any sum paid into any court, or otherwise under the control of any court, may, without prejudice to any other mode of investment, be invested in securities created under the War Loan Act, 1915; and any sums paid into court, or otherwise under the control of the court, before the passing of this Act may, in pursuance of any order of the court, or in accordance with rules of court, be realized and re-invested in those securities.

Investment
of sums in
court.

3. A Trustee shall not be liable for any loss resulting from any borrowing under this Act, or from any subscription to

or investment in the loan under the War Loan Act, 1915, or the sale of any securities for the purpose of any such subscrip-

Indemnity. tion or investment, or from the exercising of any option to convert securities under that Act; and Trustees and other persons acting in a fiduciary character are hereby expressly authorized to exercise such powers of borrowing, subscription, investment, or conversion.

4.—(1) This Act shall apply to any officer or department who holds funds on account of or for the benefit of any persons or class of persons as part of, or in consequence of, the duties of the department or office, but shall not apply to any Trustee under an implied or constructive trust.

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THE COLONIAL STOCK ACT, 1900

(63 & 64 Vict., c. 62.)

[8th August, 1900.]

2. The Securities in which a Trustee may invest under the powers of the Trustee Act, 1893, shall include any Colonial Stock which is registered in the United Kingdom in accordance with the provisions of the Colonial Stock Acts, 1877 and 1892, as amended by this Act, and with respect to which there have been observed such conditions (if any) as the Treasury may by order notified in the *London Gazette* prescribe.

**Power for
Trustees to
invest in
Colonial Stock.**

The restrictions mentioned in Section two, Sub-section (2), of the Trustee Act, 1893, with respect to the Stocks therein referred to, shall apply to Colonial Stock. The Treasury shall keep a list of any Colonial Stocks in respect of which the provisions of this Act are for the time being complied with, and shall publish the list in the *London* and *Edinburgh Gazettes*, and in such other manner as may give the public full information on the subject.

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THE UNIVERSITIES AND COLLEGE ESTATES ACT, 1858

(21 & 22 Vict., c. 44.)

[23rd July, 1858.]

21. All the net Rents, Tolls, Duties, Royalties, and

Reservations which shall be received by the University or College, for or in respect of any Lease to be granted under the authority of the last foregoing section, shall be applied and disposed of by such University or College in manner following: (that is to say) one equal third part of such net Rents, Tolls, Duties, Royalties, and Reservations, shall be applicable and be applied by such University or College as part of their ordinary income, and the remaining two equal third parts thereof shall be applicable and be applied by such University or College in or upon any of the purposes following; (that is to say) in the purchase of lands to be conveyed to the use or for the benefit of such University or College, or in the erection of new buildings, or in the addition to and enlargement of any existing buildings, or in the drainage or other permanent and lasting improvement of any lands belonging to such University or College, or in the purchase of any wayleaves or other easements, in, over, or upon any lands adjoining, or near to any such lands; and, in the meantime, until such two equal third parts shall be applied in or upon any of the purposes aforesaid, the same shall be invested by such University or College in the purchase of Government Stocks, Funds, or Securities, and the interest, dividends, and annual proceeds thereof shall be received by such University or College, and be applicable as part of their ordinary income.

26. Provided always, that this Act, or anything herein contained, shall not authorize the granting of any lease or the laying out or appropriating for the purposes in this Act mentioned of any house, or building or lands forming part of or attached to or locally situate within the boundaries or precincts of any College or of any offices, outbuildings, yards, and gardens to any such College adjoining or appertaining, and which may be necessary or convenient for actual occupation by the members of any such College or any of them, or the grant or lease of any mines, minerals, quarries, ways, watercourses, or other easements, the grant thereof may be prejudicial to the convenient enjoyment of any such house or building, or the offices or gardens thereto belonging.

27. It shall be lawful for the said Universities and any College therein respectively, and for the Colleges of *St. Mary of Winchester* near *Winchester*, and of *King Henry the Sixth at Eton*, from time to time and at any time hereafter, with the consent of the said Copyhold Commissioners (such consent to be evidenced by an Order, to be issued under their Hands and Common Seal, in the form or to the effect set forth in the said Schedule hereto), to raise by Mortgage of any Lands belonging to such University or College, for any term of years (determinable as hereafter provided), such sum or sums of money (together with all reasonable costs and expenses incidental to such raising and the application thereof) as shall be certified by the Surveyor of the University or College to be properly required, and shall be authorized by the said Commissioners, with interest thereon not exceeding the rate to be specified in such Order, and to apply such sum or sums of money for all or any of the purposes following: (that is to say) for or towards the restoration and improvement and (if need be) enlargement of any house or building forming part of or connected with or otherwise belonging to such University or College, or for or towards the erection of new or additional houses or buildings, or for the extension and improvement of any existing houses or buildings upon any lands belonging to such University or College, or for the drainage or other permanent and lasting improvement of any lands belonging to such University or College.

28. Where any Mortgage is made by any University or College under either of the powers hereinbefore contained for that purpose, such University or College shall, out of the rents and profits of the lands comprised in any such Mortgage, or out of the funds and revenues of such University or College, either repay the same moneys by the grant of an annuity, upon such terms as shall be approved of by the said Commissioners, to the lender or other person to whom the same moneys shall be due, or shall keep down

Powers to
raise Moneys
with consent
of Copyhold
Commissioners,
by Mortgage
for certain
purposes.

Provision
for the
discharge of
the Moneys
borrowed on
Mortgages.

all the interest of such moneys as the same shall become due, and annually thereafter reserve or raise out of the same rents and profits, or funds and revenues, and out of the income arising from any such Sinking Fund as shall have been created under the provisions following, one-thirtieth part at least of the amount of the principal debt, and apply the same to the reduction thereof, either by direct payment to the lender, or other person to whom the same shall be due, if he shall consent or be under engagements or otherwise required to receive the same, or by the creation of a Sinking Fund for that purpose, in such manner as shall be approved by the said Commissioners.

THE UNIVERSITIES AND COLLEGE ESTATES AMENDMENT
Act, 1880

(43 & 44 Vict., c. 46.)

[7th September, 1880.]

2.—(1) The purchase money of land sold by a University or College under the Universities and College Estates Act, 1858, or any other Act amending the same, shall, with the consent of the Copyhold Commissioners, be from time to time applicable by the University or College in the repayment of any money borrowed under any of those Acts, or to any of the purposes to which money so borrowed is applicable under those Acts.

Application
of purchase
money for
Land sold by
University or
College.
21 & 22 Vict.,
c. 44.

(2) Where any such purchase money is so applied, the like provision shall be made by the University or College for replacing the same as is by Section twenty-eight of the Universities and College Estates Act, 1858, required to be made for the repayment of money borrowed under that Act : Provided that where any such purchase money is applied in repayment of a loan, it shall be replaced within or at the expiration of the period limited for repayment of the loan and upon the terms mentioned in the order of the Copyhold Commissioners by which their consent to the loan is or was evidenced.

21 & 22 Vict.,
c. 44.

3. Any moneys applicable under the said Acts to or for any of the purposes mentioned in the twenty-seventh Section of the Universities and College Estates Act, 1858, may also be applied, by and under the authority of the said Copyhold Commissioners, in or towards the restoration or rebuilding of the Chancel of any Church which the University or College to which such moneys belong may be by law liable to restore or rebuild.

Rebuilding of
Chancels to be
within Act.
21 & 22 Vict.,
c. 44.

THE UNIVERSITIES AND COLLEGE ESTATES ACT, 1898
(61 & 62 Vict., c. 55.)

[12th August, 1898.]

1. For the purposes of sale, enfranchisement, exchange, partition, and leasing, a University or College may exercise any of the powers conferred on a tenant for life by the Settled Land Acts, 1882 to 1890, and for those purposes the provisions of those Acts mentioned in Part I of the First Schedule to this Act shall apply accordingly, subject to the modifications mentioned in Part II of that Schedule.

Extension of
powers of
sale, etc.,
exercisable by
Universities
and Colleges.

Provided that—

(a) The powers of sale, enfranchisement, exchange, and partition, and the power of granting building leases with option of purchase, shall not be exercised without the consent of the Board of Agriculture; and

(b) Capital money payable on any such sale, enfranchisement, exchange, or partition, or on the exercise of any such option, shall be paid to the Board of Agriculture.

2.—(1) Capital money paid, whether before or after the commencement of this Act, to the Board of Agriculture under the Universities and College Estates Acts, 1858 to 1880, or this Act, or arising under Section twenty-one of the Universities and College Estates Act, 1858, and the proceeds of sale of securities representing any such money, may, with the consent of the

Application
of Capital
Money.

Board of Agriculture, be applied by a University or College to any of the following purposes—

(i) The investment in the name of the Board on any securities in which Trustees are by law authorized to invest trust money; and

(ii) The purposes mentioned in the School Schedule to this Act: and

(iii) The purchase of the interest of a lessee under a lease from the University or College.

(2) The income of any such Securities shall be paid or applied as the income of the land represented by the Securities would have been payable or applicable.

(3) Land purchased under this section shall be conveyed to the University or College to be held to uses or upon trusts corresponding to the purposes for which the capital money or proceeds of sale of Securities applied in the purchase were held, except that copyhold land may be conveyed to trustees.

(4) Where the purpose to which money may be applied under this section is of such a nature that, in the opinion of the Board of Agriculture, provision ought to be made for replacing the money within a limited time, the Board shall, in giving their consent to the application, require provision to be so made.

3.—(1) The purposes for which money may be borrowed by a University or College under Section twenty-seven of the Universities and College Estates Act, 1858, shall include the improvements mentioned in the Third Schedule to this Act, being improvements to which capital money arising under the Settled Land Acts, 1882 to 1890, may be applied.

**Powers of
Borrowing for
Improvements.**

(2) The period for repayment of money borrowed after the commencement of this Act for an improvement under the Universities and College Estates Acts, 1858 to 1880, or this Act shall be such period not exceeding fifty years as the Board of Agriculture, having regard in each case to the character and probable duration of the improvement, determine.

4. Where under the Universities and College Estates Acts, 1858 to 1880, money has, before the commencement of this

Act, been borrowed or applied by a University or College for the purpose of an indemnity for the loss of a fine in respect of land held under a beneficial lease, and it is proved to the satisfaction of the Board of Agriculture that the annual amount required for the repayment of the money exceeds one-half of the net annual value of the land after deduction therefrom of the rent reserved by the beneficial lease, the Board may (with the consent of the lender in the case of money borrowed) extend, within the limits authorized by this Act for improvement loans, the term for repayment or replacement of the money, and make such other modifications in the provisions for repayment or replacement as may be considered expedient. Provided that the aggregate amount required to be repaid or replaced by a University or College in any one year in respect of money so borrowed or applied shall not be less than the average annual amount so repaid or replaced during the five years ending the thirty-first day of December, one thousand eight hundred and ninety-eight.

Power to
extend period
for Repayment
of Fine or
Loans.

6.—(1) Where the purchase consideration or compensation money payable in respect of any land belonging to a University or College is directed by any Act of Parliament to be paid into court, or either into court or to Trustees, the money shall, at the option of the University or College, be paid either as directed by the Act or to the Board of Agriculture.

Provision as
to Money
payable into
Court or to
Trustees.

(2) Where any such money has been paid either before or after the commencement of this Act either into court or to Trustees on behalf of a University or College, that sum, or the securities representing it, may, if the court on the application of, and if held by Trustees by the direction of, the University or College, be paid or transferred to the Board of Agriculture.

(3) Money paid and securities transferred to the Board of Agriculture under this section on behalf of a University or College shall be treated as capital money paid to the Board under this Act and as securities representing money so paid.

7. This Act shall apply only to the Universities and Colleges to which the Universities and College Estates Acts, 1858 to 1880, apply, and references in those Acts to any specific provisions thereof shall be construed as references to those provisions as amended by this Act or to the corresponding provisions of this Act as the case may require.

SCHEDULES

FIRST SCHEDULE

PART I

Enactments relating to Sale, Enfranchisement, Exchange, Partition, and Leasing

The Settled Land Act, 1882 (45 & 46 Vict., c. 38).

Sections three, four, six, seven, eight, nine, ten, twelve, thirteen, fourteen, sixteen, seventeen, thirty-one, thirty-four, fifty-five.

The Settled Land Act, 1884 (47 & 48 Vict., c. 18).
Section four.

The Settled Land Act, 1889 (52 & 53 Vict., c. 36).
Sections two and three.

The Settled Land Act, 1890 (53 & 54 Vict., c. 69).
Sections five, eight, and nine.

PART II

Adaptation of Enactments applied

For the purpose of adapting the foregoing enactments to the case of Universities and Colleges, the following modifications shall be made therein—

(1) References to a University or College and land belonging to a University or College shall be substituted for references to a tenant for life and settled land ;

(2) References to land or an estate or interest in land or other property, belonging to a University or College, shall be substituted for references to land or an estate or interest in land or other property, the subject of or comprised in the settlement ;

(3) References to Capital money payable to the Board

of Agriculture shall be substituted for references to Capital money arising under the Settled Land Acts, 1882 to 1890 ;

(4) The Board of Agriculture shall be substituted for the Trustees of the settlement and for the Court.

SECOND SCHEDULE

PURPOSES TO WHICH CAPITAL MONEY MAY BE APPLIED

1. Discharge, purchase, or redemption of incumbrances affecting the inheritance of land belonging to the University or College, or of land tax, rentcharge in lieu of
See 45 & 46 tithe, Crown rent, chief rent, or quit rent,
Vict., c. 38, charged on or payable out of the land.
s. 21.

2. Payment for equality of exchange or partition of land belonging to the University or College.

3. Purchase of the seignory of any part of the land belonging to the University or College, being freehold land, or in purchase of the fee simple of any part of that land, being copyhold or customary land.

4. Purchase of the reversion or freehold in fee of any part of the land belonging to the University or College, being leasehold land held for years, or life, or years determinable on life.

5. Purchase of land in fee simple, or of copyhold or customary land, or of leasehold land held for sixty years or more unexpired at the time of purchase, subject or not to any exception or reservation of or in respect of mines or minerals therein, or of or in respect of rights or powers relative to the working of mines or minerals therein, or in other land.

6. Purchase, either in fee simple, or for a term of sixty years or more, of mines and minerals convenient to be held or worked with land belonging to the University or College, or of any easement, right, or privilege convenient to be held with that land for mining or other purposes.

7. Payment of costs, charges, and expenses of or incidental to the exercise of any of the powers, or the execution of any of the provisions, of the Universities and College Estates Acts, 1858 to 1880, or this Act.

THIRD SCHEDULE

Improvements for which Universities and Colleges may Borrow

- (i) Drainage including the straightening, widening, or deepening of drains, streams, and watercourses :
- (ii) Irrigation ; warping :
- (iii) Drains, pipes, and machinery for supply and distribution of sewage as manure :
- (iv) Embanking or weiring from a river or lake, or from the sea, or a tidal water :
- (v) Groynes ; sea walls ; defences against water :
- (vi) Inclosing ; straightening of fences ; re-division of fields :
- (vii) Reclamation ; dry warping :
- (viii) Farm roads ; private roads ; roads or streets in villages or towns :
- (ix) Clearing ; trenching ; planting :
- (x) Cottages for labourers, farm servants, and artisans employed on the land or not :
- (xi) Farmhouses, offices, and out-buildings, and other buildings for farm purposes :
- (xii) Saw mills, scutch mills, and other mills, waterwheels, engine-houses, and kilns, which will increase the value of land belonging to the University for agricultural purposes or as woodland or otherwise :
- (xiii) Reservoirs, tanks, conduits, watercourses, pipes, wells, ponds, shafts, dams, weirs, sluices, and other works and machinery for supply and distribution of water for agricultural, manufacturing, and other purposes, or for domestic or other consumption :
- (xiv) Tramways ; railways ; canals ; docks :
- (xv) Jetties, piers, and landing places on rivers, lakes, the sea, or tidal waters, for facilitating transport of persons and of agricultural stock and produce, and of manure and other things required for agricultural purposes, and of minerals, and of things required for mining purposes.
- (xvi) Markets and market-places :

See 45 & 46
 Vict., c. 38,
 s. 25;
 53 & 54 Vict.,
 c. 69, s. 13.

- (xvii) Streets, roads, paths, squares, gardens, or other open spaces for the use, gratuitously or on payment, of the public or of individuals, or for dedication to the public, the same being necessary or proper in connection with the conversion of land into building land :
- (xviii) Sewers, drains, watercourses, pipe-making, fencing, paving, brick-making, tile-making, and other works necessary or proper in connection with any of the objects aforesaid :
- (xix) Trial pits for mines, and other preliminary works necessary or proper in connection with development of mines :
- (xx) Bridges :
- (xxi) Making any additions to or alterations in buildings reasonably necessary or proper to enable the same to be let :
- (xxii) Erection of buildings in substitution for buildings within an urban district taken by a local or other public authority, or for buildings taken under compulsory powers, but so that no more money be expended than the amount received for the buildings taken and the site thereof :
- (xxiii) Reconstruction, enlargement, or improvement of any of those works.

THE UNIVERSITIES OF OXFORD AND CAMBRIDGE
ACT, 1877

(40 & 41 Vict., c. 48.)

[10th August, 1877.]

12. The Commissioners may by virtue of this Act, and subject and according to the provisions thereof, make by writing under their Seal Statutes for the University and for any College or Hall.

16. With a view to the advancement of art, science, and other branches of learning, the Commissioners, in Statutes made by them for the University, may from time to time make provision for the following purposes or any of them :

Objects of
Statutes for
University.

(1) For enabling or requiring the several Colleges, or any of them, to make contribution out of their Revenues for University purposes, regard being first had to the wants of the several Colleges in themselves for educational and other collegiate purposes :

(2) For the creation, by means of contributions from the Colleges or otherwise, of a common University Fund to be administered under the supervision of the University :

(3) For making payments, under the supervision of the University, out of the said common Fund for the giving of instruction, the doing of work, or the conducting of investigations within the University in any branch of learning or inquiry connected with the studies of the University :

(4) For consolidating any two or more Professorships or Lectureships :

(5) For erecting and endowing Professorships or Lectureships :

(9) For providing retiring pensions for Professors and Lecturers :

(10) For providing new or improving existing Buildings, Libraries, Collections, or Apparatus :

(11) For diminishing the expenses of University education by founding Scholarships tenable by Students either at any College or Hall within the University, or as unattached Students, not members of any College or Hall, or by paying salaries to the teachers of such unattached Students, or by otherwise encouraging such unattached Students :

(12) For founding and endowing Scholarships, exhibitions, and prizes for encouragement of proficiency in any art or other branch of learning :

(15) For regulating the application of the purchase-money for any Advowson sold by the University :

(16) For founding any office not paid out of University or College Funds in connection with any special educational work done out of the University under the control of the University, and for remunerating any Secretary or Officer resident in the University and employed there in the management of any such special educational work,

In accordance with the power conferred on them the University of Oxford Commissioners made the following Statute concerning the form of Accounts of the University and the Audit and Publication thereof—

1. The Curators of the University Chest shall take care that the Accounts of the University are duly kept in proper Books of Account in which shall be entered all Receipts and Payments by them on behalf of the University, whether in respect of the General Fund, or of Funds appropriated to the support of particular Institutions within the University, or to other special purposes, or of Trust Funds. Proper records should be kept of all property of every kind held, and of all debts and liabilities contracted, by or on account of the University or any Trust. The Books shall include—

(a) A Register of all the property of the University, showing the description, situation, amount, rental, or other annual value of every property ; the fixed charges on it (if any) ; and, in the case of Stocks or other Securities, the names in which and the Accounts to which the same are standing :

(b) A Roll of Rents, Rentcharges, Dividends, and other annual income, showing the amounts receivable and those actually received during the year, and the arrears (if any) at the beginning and at the close of the account :

(c) A Cash book or Cash books, containing a record of all cash transactions :

(d) A Ledger or Ledgers :

And also all such other Books as may be necessary or convenient for regularly recording all such Receipts and Payments and other matters and things as aforesaid, and for enabling the several Accounts to be duly checked and balanced, and the correctness of the Abstracts and Balance Sheet for the publication of which provision is made by this Statute, to be ascertained and verified.

2. On or before the twenty-fourth day of March in every year the Curators of the University Chest shall cause to be prepared and delivered to the Vice-Chancellor—

(a) Abstracts of Receipts and Payments on the General Account of the University for the year ending on the thirty-first of December last preceding :

(b) Abstracts of Receipts and Payments on account of the several properties held in trust by the University and administered by the Curators of the University Chest :

(c) Abstracts of Receipts and Payments on account of any special Funds administered by the Curators of the University Chest :

(d) A Balance Sheet, showing at the close of the account the

state of the current accounts of all the Funds administered by the Curators of the University Chest :

(e) A Statement of all Loans contracted by the University and outstanding ; showing in respect of each Loan the amount originally borrowed, the amount remaining unpaid, the power under which the Loan was contracted, the rate of interest, and the provision made for repayment.

The Abstracts of Receipts and Payments on the general account of the University, and on account of properties held in Trust, and the Balance Sheet shall be respectively in the forms set forth in the Schedule annexed to this Statute. But the Curators may, if for special reasons it appear advisable to do so, subdivide any item of account in the scheduled forms into more items than one, or insert additional items.

3. The Hebdomadal Council shall annually appoint a University Auditor, who shall be either a professional Accountant carrying on business in London or Westminster, or (if they think fit) a person conversant with Accounts approved by the Permanent Secretary to Her Majesty's Treasury. He shall, in conjunction with the Auditors of University Accounts appointed by the University (or alone if the University by Statute so determine), audit all Accounts, whether relating to the general Revenues and Expenditure of the University, or to property held on special Trusts. The Auditor or Auditors shall report in writing to the Vice-Chancellor whether the Accounts are duly kept in proper Books of account in conformity with the provisions of this Statute, and whether the Abstracts, Balance Sheet, and Statement contain a true account of the financial condition of the University.

It shall be lawful for the Auditors or any Auditor to report specially as to any payment which they or he may judge to have been made without sufficient authority. When such a special Report is made, the question shall be referred to three persons, one of whom shall be the Assessor for the time being to the Vice-Chancellor, and the other two shall be nominated at the beginning of each academical year by the Hebdomadal Council ; and the decision of such three persons or the major part of them shall be final.

4. The expense of such audit (including any payment of any clerk or clerks whose assistance may be required) shall be paid out of the University Chest.

5. On receiving the Abstracts, Balance Sheet, Statement, and Auditors' Report above mentioned, the Vice-Chancellor shall cause them to be printed, laid before Convocation, and published within the University. When any question is referred as aforesaid the Vice-Chancellor shall cause the decision of the Referees to be in like manner printed and published.

6. Abstracts of the Accounts of the Bodleian Library, the Botanic Garden, the Sheldonian Theatre, the Ashmolean Museum, the Taylor Institution, the University Galleries, the University Museum (including the several scientific departments thereof), the University Observatory, the Delegacy of University Police, the Curators of the Park, the Hope Curators, the Hope Keeper of Engraved Portraits, the Delegacy of Students not attached to any College or Hall, the Lodging-houses Delegacy, the Ruskin Trustees, and of all other funds appropriated to the support of particular Institutions, or to other special purposes within the University, and administered otherwise than by the Curators of the University Chest, shall be in like manner audited, laid before Convocation, and published.

7. The general Accounts of the University and the Accounts of each Trust shall, after the audit thereof, be open to inspection by Members of Convocation at convenient times, under such regulations as the University may by Statute make from time to time, and in default of subject to any such statutory regulations, under regulations to be made by the Curators of the University Chest.

8. The Accounts of the Delegates of the Clarendon Press shall be audited in such manner as the University shall by Statute from time to time determine.

This Statute is a Statute wholly for the University within the meaning of the Universities of Oxford and Cambridge Act, 1877, Section 30.

17. The Commissioners, in Statutes made by them for a College, may from time to time make provision for the following purposes relative to the College, or any of them :

Objects of Statutes for Colleges in themselves.

(1) For altering and regulating the conditions of eligibility or appointment, including where it seems fit those relating to age, to any Emolument or Office held in or connected with the College, the mode of election or appointment thereto, and the value, length, and conditions of tenure thereof, and for providing a retiring pension for a holder thereof :

(5) For affording further or better instruction in any art or science or other branch of learning :

(6) For providing new or improving existing buildings, libraries, collections, or apparatus, for any purpose connected with instruction or research in any art or science or other branch of learning, and for maintaining the same ; .

(7) For diminishing the expense of education in the College :

(10) For regulating the application of the purchase money for any Advowson sold by the College.

18. The Commissioners, in Statutes made by them for a College, may from time to time make provision for the following purposes relative to the University, or any of them—

Objects of
Statutes for
Colleges in
relation to
University.

(1) For authorizing the College to commute any annual payment agreed or required to be made by it for University purposes into a Capital sum to be provided by the College out of money belonging to it, and not produced by any sale of lands or hereditaments made after the passing of this Act :

(3) For assigning a portion of the Revenues or property of the College, as a contribution to the Common Fund or otherwise, for encouragement of instruction in the University in any art or science or other branch of learning, or for the maintenance and benefit of persons of known ability and learning studying or making researches in any art or science or other branch of learning in the University :

(5) For providing out of the Revenues of the College for payments to be made, under the supervision of the University, for work done or investigations conducted in any branch of learning or inquiry connected with the studies of the University within the University.

21. The Commissioners, in Statutes made by them, shall from time to time make provision—

Provision for
Accounts,
Audit, Bor-
rowing, and
Leases.

(1) For the form of Accounts of the University and of a College relating to funds administered either for general purposes, or in trust, or otherwise, and for the audit and publication

thereof :

(2) For the publication of Accounts of Receipts and Expenditure of money raised under the borrowing powers of the University or of a College :

And the Commissioners, in Statutes made by them, may from time to time, if they think fit, make provision—

(3) For regulating the exercise of the borrowing powers of the University or of a College :

(4) For regulating the conditions under which beneficial leases may be renewed by the University or a College.

In accordance with this power conferred on them, the University of Oxford Commissioners have made a Statute for each College concerning the Form of Accounts and their Audit, and the following is the form almost universally followed—

WE, the University of Oxford Commissioners, under and by virtue of all and every the powers in this behalf enabling us contained in the Universities of Oxford and Cambridge Act, 1877, do by this present Instrument under our Seal make the Statute hereunto annexed for.....College, in the University of Oxford, concerning the Form of Accounts of the College, and the Audit and Publication thereof—

A Statute for.....College, concerning the Form of Accounts of the College and the Audit and Publication thereof.

1. The (Dean, President, Master, Principal, Warden, etc.) and Fellows shall cause proper Books of Account to
Accounts. be kept, in which shall be entered—

(i) All Receipts and Payments on account of or authorized by the College, whether from and to persons being members of the College or from and to any other person whomsoever ;

(ii) All Debts and Liabilities contracted by or to the College or by or to any person on account or by authority of the College ;

(iii) A Statement in detail of all property of every kind or description held by or in trust for the College.

2. The Books shall include—

(a) A Register of all the property of the College, showing the description, situation, amount, rental, or other annual value of every property ; the fixed charges on it (if any) ; and in the case of Stocks or other Securities the names in which and the Accounts to which the same are standing :

(b) A Roll of Rents, Rentcharges, Dividends, and other annual income, showing the amounts receivable and those actually received during the year, and the arrears (if any) at the beginning and at the close of the Account ;

(c) A Cash Book or Cash Books, containing a record of all Cash transactions ;

(d) A Ledger or Ledgers ;

And also such other books as may be necessary or convenient for regularly recording all such Receipts and Payments and other matters and things as aforesaid, and for enabling the several Accounts to be duly checked and balanced, and the correctness

of the Abstracts, for the publication of which provision is hereinafter made, to be ascertained and verified.

3. Separate Accounts shall be kept of all property in trust for any purpose other than the general purposes of the College, and of Receipts and Payments in respect of such property.

4. The College Accounts shall be audited once at least in every year. Theand Fellows shall appoint for that purpose an Auditor or Auditors. One person so appointed

Audit. shall be either a professional Accountant carrying on business in London or Westminster, or (if the.....and Fellows think fit) a person conversant with Accounts approved by the Permanent Secretary to Her Majesty's Treasury. The Auditor or Auditors shall report in writing to the.....and Fellows whether the Accounts of the College are duly kept in proper Books of Account in conformity with the provisions of this Statute, and whether the Abstracts and Balance Sheet prepared pursuant to the provisions of this Statute contain a full and true Account of the financial condition of the College. It shall be lawful for the Auditors or any Auditor to report specially as to any payment which they or he may judge to have been made without sufficient authority. The expenses of the Audit (including payment to any clerks or clerk whose assistance the Auditor or Auditors may require) shall be paid out of the revenues of the College.

5. The.....and Fellows shall in every year cause to be prepared and delivered to the Registrar of the University for publication such Abstracts, Statements, and other matters relating to the Accounts of the College as by any Statute made or to be made for the University under the powers of the Universities of Oxford and Cambridge Act, 1877, they are or shall be required to furnish ; and shall also furnish to the Curators of the University Chest such information as may be required for determining the amount to be paid by the College to the Curators as a contribution for University purposes under any Statute made under the like authority.

**Abstracts,
etc., for
Publication.**

The Cambridge University Commissioners, as mentioned in Chapter I, have not appointed professional Auditors for either the University Chest or for Colleges. The following Statute was made by them under the Act of 1887—

The Accounts of all moneys received and expended on behalf of the University, relating to funds administered for general purposes, or in trust or otherwise, shall be audited once in every year.

The time of such Audit, the number of Auditors, and the mode of their appointment shall be determined by Grace.

An Abstract of the Accounts shall be made after the Audit, as nearly as practicable in the form contained in the Schedule attached to this Chapter. Such Abstract shall be signed by the Auditors, and published to the University by the Vice-Chancellor.

The Accounts of receipt and expenditure of money raised under the borrowing powers of the University shall be annually audited and published to the University.

THE UNIVERSITIES AND COLLEGES (EMERGENCY POWERS) ACT, 1915

(5 George V, c. 22.)

[16th March, 1915.]

PART I

AMENDMENT OF THE UNIVERSITIES AND COLLEGE ESTIMATES ACT

1.—(1) The purposes for which money may be borrowed by a University or College under Section twenty-seven of the Universities and College Estates Act, 1858, or to which purchase or other capital money may be applied under the Universities and College Estates Amendment Act, 1880, or under the Universities and College Estates Act, 1898, shall include the making good of any deficiency in the revenues of the University or College in any financial year of the University or College expiring at or before the end of the emergency period which in the opinion of the Board of Agriculture and Fisheries is due to circumstances attributable directly or indirectly to the present war :

Provided that for the purpose of such borrowing or application no certificate from a surveyor shall be necessary.

(2) Money borrowed or applied under this section shall be repaid or replaced within such period, not exceeding fifty years, from the end of the emergency period, as the Board of Agriculture and Fisheries may determine.

2. It shall be lawful for the Board of Agriculture and

Fisheries at any time before the end of the emergency period, upon the application of the University or a College, in

any case where the Board determine that it is expedient owing to circumstances attributable directly or indirectly to the present war to do so, and where in the case of money borrowed the lender consents—

Power to extend period for repayment or replacement of money borrowed or applied.

(a) to extend the period within which the outstanding part of any money borrowed, or purchase or other capital money applied, before the passing of this Act under any of the Universities or College Estates Acts, 1858 to 1898, is required to be repaid or replaced, by such period not exceeding ten years as the Board may determine ;

(b) to suspend the obligation to make such repayment or replacement for such period not extending beyond one calendar year from the end of the emergency period as the Board may determine, with a corresponding extension of the period of repayment or replacement.

3. This Part of this Act shall apply only to the Universities and Colleges to which the Universities and College Estates

Application of Part I. Acts, 1858 to 1898, apply, and references in those Acts to any specific provisions shall be read as references to those provisions as amended by this Part of this Act.

PART II

POWER OF UNIVERSITIES OF OXFORD AND CAMBRIDGE AND COLLEGES THEREIN TO MAKE EMERGENCY STATUTES

4.—(1) Notwithstanding anything in the Universities of Oxford and Cambridge Act, 1877, or any other enactment, it

shall be lawful for the University of Oxford or the University of Cambridge (which Universities are hereinafter severally referred to as the

Power to make Emergency Statutes.

40 & 41 Vict., c. 48. University) or any College in the University

to make statutes for the purposes and in the manner and subject to the provisions mentioned in this Part of this Act, and a statute made under this Part of this Act is hereinafter referred to as an emergency statute.

5. The purposes for which provision may be made by an emergency statute shall be the following—

Purposes for which
Emergency
Statutes may
be made. (c) For the application for any purpose relative to the University or a College of any moneys which may be undisposed of by reason of any such postponement or suspension as aforesaid ;

(i) For making payments until any date not later than the end of the emergency period out of the corporate revenue or other fund applicable to the statutory purposes of a College to the tuition fund of the College ;

(j) For suspending payments until any date not later than the end of the emergency period from the corporate revenue or other fund applicable to the statutory purposes of a College to any pension or other fund of the College ;

(k) For making payments until any date not later than the end of the emergency period out of the income of any fund applicable to any statutory purposes of a College, so far as the income is not required for the purposes of that fund, to any fund applicable to some other statutory purposes of the College ;

(l) For making payments until any date not later than the end of the emergency period out of the corporate revenue or other fund applicable to the statutory purposes of a College for the relief and assistance of members of the College or other members of the University engaged during the present war in the naval or military service of the Crown or in some other service of the Crown connected with the present war or in any work abroad of the British Red Cross Society, the St. John Ambulance Association, or any body with similar objects; Provided that an emergency statute shall not authorize or direct any payment out of capital money subject to the provisions of the Universities and College Estates Acts, 1858 to 1898, or affect any obligation arising under those Acts to make any repayment or replacement.

PART III

GENERAL

(2) For the purposes of this Act the expression “ the end

of the emergency period " means the end of the next calendar year after that in which the present war terminates.

Construction.

THE LICENSING (CONSOLIDATION) ACT, 1910
(10 Edward VII and 1 George V, c. 24.)

[3rd August, 1910.]

2.—(1) For the purposes of this Act, a licensing district is a petty sessional division of a county, and a borough having a separate commission of the peace.

Licensing districts and authorities. Where a county is not divided into petty sessional divisions, the whole county (excluding the area of any borough having a separate commission of the peace) shall be deemed to be a petty sessional division for the purposes of this Act.

(2) For the purposes of this Act, as respects a licensing district being a petty sessional division of a county—

(c) the Compensation Authority are quarter sessions.

(3) For the purposes of this Act, as respects a licensing district being a borough—

(c) The Compensation Authority are—

(i) in a county borough, the whole body of borough justices; and

(ii) in a borough not being a county borough the quarter sessions for the county.

(4) For the purposes of this section, the City of London shall be deemed to be a county borough.

5.—(1) The Compensation Authority may, if they think fit, divide their area into districts for the purpose of their powers and duties under this Act as such authority, and in that case this Act shall operate as if those districts were separate areas for the purposes of those powers and duties under the same authority.

Division of area.

(2) Where quarter sessions have customarily been held separately by adjournment or otherwise for any part of a county, the Secretary of State may by order, on the application of the justices sitting at each such separate sessions,

constitute for the purposes of the execution of the powers and duties of quarter sessions as Confirming and Compensation Authority any part of the county for which quarter sessions are for the time being so separately held a separate county, and the justices usually sitting at those separate quarter sessions a separate quarter sessions, and make all necessary provisions for the administration of those powers and duties in such a case.

6.—(1) A Compensation Authority may delegate any of their powers and duties under this Act as such authority to a committee appointed in accordance with rules made by them under this section, and, when the authority are the quarter sessions of a county, shall so delegate their power of determining any question as to the refusal of the renewal of a justices' licence under this Act and matters consequential thereon.

Committees
of
Compensation.

(2) The Confirming Authority of a county may delegate any of their powers and duties under this Act as such authority to a committee appointed in accordance with rules made by them under this section, and shall so delegate their power of confirming the grant of a new Justices' licence.

(3) Any Compensation Authority or Confirming Authority who may appoint, or who are required to appoint, a committee under this section, may make rules to be approved by a Secretary of State, for the mode of appointment of those committees, and for the number, the quorum, and (so far as procedure is not otherwise provide for) the procedure of those committees.

(4) In a county the same committee may be appointed for the purpose of the exercise of the powers and duties of quarter sessions both as Compensation Authority and as Confirming Authority.

(5) The Justices of any borough, not being a county borough but having a separate commission of the peace, shall be entitled to appoint one of their number to act, with reference to the determination of any question as to the refusal of the renewal of a Justices' licence under this Act and any matters

consequential thereon, on the committee appointed under this section by the quarter sessions of the county as Compensation Authority, and for those purposes any Justice so appointed shall be deemed to be an additional member of the committee.

20.—(1) Where the Compensation Authority refuse the renewal of an old on-licence, a sum equal to the difference between the value of the licensed premises (calculated as if the licence were subject to the same conditions of renewal as were applicable immediately before the passing of the Licensing Act, 1904, and including in that value the amount of any depreciation of trade fixtures arising by reason of the refusal to renew the licence), and the value which those premises would bear if they were not licensed premises, shall be paid as compensation to the persons interested in the licensed premises.

**Payment of
Compensation.**

(2) The amount to be so paid shall, if any amount is agreed upon by the persons appearing to the Compensation Authority to be interested in the licensed premises and is approved by that authority, be that amount, and, in default of such agreement and approval, shall be determined by the Commissioners of Inland Revenue in the same manner and subject to the like appeal, under section ten of the Finance Act, 1894, to the High Court, as on the valuation of an estate for the purpose of estate duty, and in any event the amount shall be divided amongst the persons interested in the licensed premises (including the holder of the licence) in such shares as may be determined by the Compensation Authority—

Provided that, in the case of the holder of the licence, regard shall be had not only to his legal interest in the premises or trade fixtures, but also to his conduct and to the length of time during which he has been the holder of the licence ; and the holder of a licence, if a tenant, shall (notwithstanding any agreement to the contrary) in no case receive a less amount than he would be entitled to as tenant from year to year of the licensed premises.

(3) If on the division of the amount to be paid as compensation any question arises which the Compensation

Authority consider can be more conveniently determined by the county court, they may refer that question to the county court in accordance with rules of court to be made for the purpose.

(4) Any costs incurred by the Commissioners of Inland Revenue on an appeal from their decision to the High Court under this section shall, unless the High Court order those costs to be paid by some party to the appeal other than the Commissioners, be paid out of the amount to be paid as compensation.

21.—(1) The Compensation Authority shall, in each year, unless they certify to the Secretary of State that it is unnecessary to do so in any year, for the purpose of Compensation
Fund. their powers and duties under this Act as Compensation Authority, impose in respect of all old on-licences renewed in respect of premises within their area, charges at rates not exceeding, and graduated in the same proportion as, the rates shown in the scale of maximum charges set out in the First Part of the Third Schedule to this Act.

(2) Charges payable under this section in respect of any licence shall be levied and paid together with, and as part of the duties on, the corresponding excise licence, but a separate account shall be kept by the Commissioners of Customs and Excise of the amount produced by those charges in the area of any Compensation Authority, and that amount shall in each year be paid over to that authority in accordance with rules made by the Treasury for the purpose.

(3) Such deductions from rent as are set out in the Second Part of the Third Schedule to this Act may, notwithstanding any agreement to the contrary, be made by any holder of a licence who pays a charge under this section, and also by any person from whose rent a deduction is made in respect of the payment of such a charge.

(4) Any sums paid to a Compensation Authority in respect of the charges under this section, or received by the Compensation Authority from any other source for the payment of compensation under this Act, shall be paid by them to a

separate account under their management, and the moneys standing to the credit of that account shall constitute the compensation fund.

(5) Any expenses incurred by the Compensation Authority in the payment of compensation under this Act, or otherwise in the exercise of their powers or the performance of their duties as Compensation Authority, and such expenses of the Licensing Justices incurred with respect to the matter of the reference to the Compensation Authority of the question of the renewal of the old on-licences, or the grant of new on-licences, as the Compensation Authority may allow, shall be paid out of the compensation fund, and the Compensation Authority, in the exercise of their powers, shall have regard to the funds available for the purpose.

(6) The Compensation Authority may, with the consent of a Secretary of State, borrow in accordance with rules made under this Act, on the security of the compensation fund, for the purpose of paying any compensation payable under this Act.

A Brewery Company, compelled by the corresponding section of the 1904 Act to allow to the tenants of their licensed houses certain deductions from rent in respect of the Company's share of the annual compensation charge imposed on the licensed houses, were held by the Court of Appeal to be entitled to deduct the payments from the profits with a view to ascertaining the balance on which income tax had to be paid.—*Smith v. Lion Brewery Co., Ltd.* [1911], A.C. 150.

32.—(1) Where an appeal under this Act is allowed, or where any such appeal is dismissed or abandoned and the Licensing Justices whose decision is appealed against cannot recover the costs incurred by them from any other person, the court of quarter sessions shall order the treasurer of the county in which the licensing district for which the Licensing Justices act is situated, or, in the case of a licensing district being a borough having a separate court of quarter sessions, the treasurer of the borough, to pay to the Justices such sum as in the opinion of the court is sufficient

Order for
payment of
costs of jus-
tices out of
local funds.

to indemnify them from all costs and charges whatsoever to which they may have been put, and that the treasurer is hereby authorized to pay the sum so ordered to be paid, and any sum so paid shall be allowed to him in his accounts.

47. A Secretary of State may make rules for carrying into effect the provisions of this Act, as to the renewal of old

Rules. on-licences, the payment of compensation, and as to the attachment of conditions to new Justices' on-licences, and may by those rules amongst other things—

(a) provide for the provisional renewal of licences which are included in reports of Licensing Justices under this Act, and for consultation with those Justices as to their reports, and for the time and manner of the consideration of those reports and of the payment of compensation ; and

(b) provide for the enforcement of any security given for money borrowed by the Compensation Authority, and for the time, not exceeding fifteen years, within which money borrowed is to be replaced ; and

(c) regulate the management and application of the Compensation Fund and the audit of the accounts of the Compensation Authority ; and

(d) provide for constituting, where requisite, committees of quarter sessions standing committees, and for the employment of officers for the purposes of the provisions of this Act as to the reference to the Compensation Authority of the question of the renewal of old on-licences, the payment of compensation, and as to the attachment of conditions to new Justices' licences ; and

(e) regulate the procedure of the Compensation Authority on the consideration of the reports of Licensing Justices under this Act and on any hearing under this Act with reference to the refusal of the renewal of old on-licences or the approval or division of the amount to be paid as compensation ; and

(f) provide for the authentication of any documents on behalf of Compensation Authorities or their committees, or Confirming Authorities in a county or their committees.

THIRD SCHEDULE

PART I

SCALE OF MAXIMUM CHARGES FOR COMPENSATION LEVY

Annual Value of Premises to be taken for the purpose of the Publican's Excise Licence Duty.						Maximum Rate of Charge.		
£		£				£	s.	d.
Under	15	.	.	.	.	1	0	0
15 and under	20	.	.	.	.	2	0	0
20	25	.	.	.	.	3	0	0
25	30	.	.	.	.	4	0	0
30	40	.	.	.	.	6	0	0
40	50	.	.	.	.	10	0	0
50	100	.	.	.	.	15	0	0
100	200	.	.	.	.	20	0	0
200	300	.	.	.	.	30	0	0
300	400	.	.	.	.	40	0	0
400	500	.	.	.	.	50	0	0
500	600	.	.	.	.	60	0	0
600	700	.	.	.	.	70	0	0
700	800	.	.	.	.	80	0	0
800	900	.	.	.	.	90	0	0
900 and over	.	.	.	.	.	100	0	0

The rate of charge in the case of an hotel as defined for the purpose of this provision, shall be one-third of that charged in other cases, and in the case of any licensed premises which are certified by the Licensing Justices on the application of the holder of the licence to be used only as public gardens, picture galleries, exhibitions, places of public or private entertainment, railway refreshment rooms, *bonâ fide* restaurants or eating houses, or for any other purpose to which the holding of a licence is merely auxiliary, such rate, not less than one-third of that charged in other cases, as the Justices think proper under the circumstances.

For the purposes of this provision, an hotel means premises of the value of fifty pounds and upwards, which are proved to the satisfaction of the Commissioners of Customs and Excise to be structurally adapted for use as an inn or hotel for the reception of guests and travellers desirous of dwelling therein, and to be mainly so used, and in the case of which

either no portion of the premises is set apart and used as an ordinary public-house for the sale and consumption therein of liquors, or the annual value of any portion so set apart and used does not in the opinion of the Commissioners of Customs and Excise exceed twenty-five pounds.

PART II

SCALE OF DEDUCTIONS IN RESPECT OF COMPENSATION
LEVY

A person whose unexpired term does not exceed		1 year { may deduct a } sum equal to		100 per cent of the charge	
"		2 years	"	88	"
"		3	"	82	"
"		4	"	76	"
"		5	"	70	"
"		6	"	65	"
"		7	"	60	"
"		8	"	55	"
"		9	"	50	"
"		10	"	45	"
"		11	"	41	"
"		12	"	37	"
"		13	"	33	"
"		14	"	29	"
"		15	"	25	"
"		16	"	23	"
"		17	"	21	"
"		18	"	19	"
"		19	"	17	"
"		20	"	15	"
"		21	"	14	"
"		22	"	13	"
"		23	"	12	"
"		24	"	11	"
"		25	"	10	"
,, exceeds 25 but does not exceed		30	"	7	"
30		35	"	6	"
35		40	"	5	"
40		45	"	4	"
45		50	"	3	"
50		55	"	2	"
55		60	"	1	"

But the amount deducted shall in no case exceed half the rent.

THE LICENSING RULES, 1910

2.—(1) In the Rules—

“ The Act ” means the Licensing (Consolidation) Act, 1910.

“ The Compensation Authority ” means, as respects a county, the quarter sessions for that county, and, as respects a county borough, the whole body of borough Justices, and in either case includes, with regard to any matter delegated to a committee under Sub-section (1) of Section six of the Act, the committee to which the matter is delegated.

57. All sums received by the Compensation Authority in respect of charges under the Act, or from any other source for the payment of compensation, shall be paid to the treasurer of the Compensation Authority and credited by him to the compensation fund.

58. Any fees paid under these Rules to the clerk of the Compensation Authority for furnishing copies of any document shall be accounted for by him and paid into the compensation fund.

59. Money authorized by the Compensation Authority to be paid out of the Compensation fund shall not be paid except on an order signed by two members of the Compensation Authority and by the treasurer of that authority or, if the treasurer is a bank, the clerk of that authority.

60. It shall be the duty of the Compensation Authority to see that any balance, in excess of current requirements, standing to the credit of the compensation fund is placed on deposit at interest, or invested in any manner authorized by law for investments by trustees, and that the interest thereon is paid to the credit of the compensation fund.

61.—(1) It shall be the duty of the Compensation Authority to cause proper accounts to be kept in connection with the compensation fund, and a financial statement to be prepared at the close of each year in the form directed by the Secretary of State.

(2) The accounts shall be made up for each calendar year, or for such other period as the Compensation Authority, with the approval of the Secretary of State, determine.

62.—(1) The Compensation Authority shall appoint a professional accountant, approved by the Secretary of State, to be the Auditor of their accounts.

(2) The Auditor may be appointed for a term not exceeding three years, but a retiring Auditor shall be eligible for re-appointment.

(3) The remuneration of the Auditor shall be such as may be fixed by the Compensation Authority with the consent of the Secretary of State.

63. As soon as may be after the close of the year for which the accounts are made up, the Compensation Authority shall submit to the Auditor for examination the detailed accounts, together

with the vouchers and authorities for receipts and payments, and shall also submit, for the Auditor's certificate, the annual financial statement required by these Rules.

64. A copy of the financial statement, as certified by the Auditor, shall be sent by the Compensation Authority to the Secretary of State, together with a copy of any report made by the Auditor in regard thereto.

65. All money borrowed shall be repaid within such period, not exceeding fifteen years, as the Secretary of State shall determine in each case.

66. Every application for the consent of the Secretary of State to the borrowing of money shall state

(a) the period for which it is proposed that the loan should run ;

(b) the proposed rate of interest ;

(c) the reasons which in the opinion of the Compensation Authority render the borrowing as proposed advisable, and

(d) an estimate of the proportion which the annual amount required for the service of the loan will bear to the total annual amount which can be raised under the Act in their area if the maximum charges are imposed.

67. Every loan raised under the Act shall be by way of mortgage of the compensation fund signed by at least two members of the Compensation Authority and by the treasurer of that authority or, if the treasurer is a bank, the clerk of that authority.

68. The Compensation Authority shall provide for the repayment of every loan either by equal yearly or half-yearly instalments of principal or of principal and interest combined, or by means of a sinking fund established in accordance with these Rules.

69. Where a loan is to be repaid by means of a sinking fund, the Compensation Authority shall establish a sinking fund as follows—

(1) Such equal yearly or half-yearly sums shall be paid into the sinking fund in each year as, being accumulated at compound interest will, in the opinion of the Secretary of State, at the expiration of some period no longer than the period for which the loan is authorized be sufficient, after payment of all expenses, to discharge the loan ;

(2) The first of such payments shall be made within one year from the date of the loan ;

(3) All sums paid into the sinking fund shall, as soon as may be, be invested by the Compensation Authority in securities in which trustees are, for the time being, by law authorized to invest, and any investments made in pursuance of this provision may from time to time be varied or transposed ; and all dividends and other annual sums received in respect of any investments

shall, as soon as may be after they are received, be paid into the sinking fund and invested by the Compensation Authority in like manner ;

(4) The Compensation Authority may from time to time apply the sinking fund, or any part thereof, in or towards the discharge of the loan for which it was created, and until that loan is discharged shall not apply the sinking fund, or any part thereof, for any other purpose ;

(5) Any surplus of the sinking fund remaining after the discharge of the loan for which it was created shall be paid into some other sinking fund under the control of the Compensation Authority, or, if there is no such other sinking fund, into the compensation fund.

(6) Where any part of the sinking fund is employed in paying off any part of the loan before the period for which the loan is authorized, the interest which would otherwise be payable on that part of the loan shall be paid into the sinking fund and invested as hereinbefore provided.

70. If it appears to the Secretary of State that the Compensation Authority have failed to comply with the provisions of these Rules with respect to the sinking fund, he may, if he thinks fit, after hearing the Compensation Authority, if they desire to be heard, by order direct the Compensation Authority to remedy the default, and the Compensation Authority shall comply with any order so made.

THE COUNTY COURTS ACT, 1888

(51 & 52 Vict. c. 43.)

[13th August, 1888.]

171. The Treasurer of every Court shall from time to time audit and settle the Accounts of the Registrar and other

Audit of Registrar's Accounts.	Officers of the Court, and shall receive the balances of the various moneys which such Registrar and other Officers shall have received
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under this Act ; and the Registrar shall pay over to the Treasurer of the Court, at such times as he may be directed by the Treasury, the moneys received by him as a Registrar.

THE SHERIFFS ACT, 1887

(50 & 51 Vict., c. 55.)

[16th September, 1887.]

21.—(1) Every Sheriff shall within two months after the

expiration of his office, or in the case of the death of any Sheriff the Under-Sheriff by him appointed, shall within two months next after the death of such Sheriff, **Transmission of Accounts of Sheriff.** transmit to the Treasury a just and true Account under his hand :

(a) Of all sums received by such Sheriff for the use of the Crown, and of all sums paid or claimed by him or on his behalf (including such sums as have been usually inserted in the bill of cravings), with all such particulars as are needful to explain the same, and

(b) Of the names and residences of all persons incurring fines, issues, amerciaments, forfeited recognizances, or sums of money which he has been authorized to levy by virtue of any writ issued to him or to any predecessor in office, and if the same have not been levied the causes of their not having been levied ;

and the Treasury may grant a Warrant for the allowance of the sums so paid or claimed in the Accounts, or for the payment of such sum of money in respect thereof as they may think reasonable :

(2) Provided as follows—

(a) A Sheriff or Under-Sheriff shall not be imprisoned upon any process for not finishing his Accounts in due time, or for any contempt or neglect in relation to his Accounts, except by a Warrant naming such Sheriff or Under-Sheriff and specifying his offence, and issued by one of the Judges of the High Court of Justice ;

(b) An Under-Sheriff shall not be personally responsible for any sum received by a deceased Sheriff, but the same shall be answered by the representatives of the deceased Sheriff or otherwise in due course of law ; and

(c) Nothing in this section shall alter the right of any body corporate or person under any Charter to receive any fines or other sums.

22.--(1) All Accounts of Sheriffs and their Under-Sheriffs which are transmitted to the Treasury under this Act shall be examined and audited by such persons and in such manner as the Treasury may from time to time by warrant direct ;

and the Treasury may by any Warrant make such provisions in relation to the transmission, examination, verification, and audit of such Accounts, and for ascertaining and determining the balances due from and the discharge of the persons accounting, as to the Treasury may seem proper.

**Audit of
Accounts of
Sheriff.**

(2) Every such Warrant shall be laid before both Houses of Parliament within fourteen days after the making thereof if Parliament be sitting, and if Parliament be not sitting then within fourteen days after the next meeting of Parliament.

(3) If under any such Warrant it is necessary for a Sheriff or Under-Sheriff to take any oath to any Account or any matter relating thereto, such oath, except when the Treasury require his personal examination before the person appointed by them to audit, may be sworn before any Judge of Her Majesty's High Court of Justice, or before any Master of the Supreme Court of Judicature, or before any Commissioner for taking oaths in the Supreme Court of Judicature, or before any Justice of the Peace.

(4) If any Officer, clerk, or other person concerned in the passing of Sheriffs' Accounts by his wilful act or default hinders any Sheriff in passing his Accounts, or obtaining his "Quietus," he shall make such satisfaction to the party aggrieved as may be ordered by Her Majesty's High Court of Justice, or any Judge thereof, on complaint made in such summary manner as the said Court may order.

THE PORT OF LONDON ACT, 1908
(8 Edw. VII, c. 68.)

[21st December, 1908.]

18.—(1) The Port Authority may borrow money for the purpose of—

**Powers of
Borrowing.**

(a) raising any money payable in respect of the transfer of the undertaking of any Dock Company under this Act ;

(b) purchasing, redeeming, or paying off any debentures,

mortgage debt, or other charge, the liability for which is transferred to the Port Authority by or under this Act ;

(c) raising any money payable in respect of the transfer under this Act of any undertaking affording or intended to afford accommodation or facilities for loading, unloading or warehousing goods in the Port of London ;

(d) dredging and otherwise improving the River ;

(e) constructing works for improving the accommodation and facilities of the Port of London, or acquiring land for any such work ;

(f) Paying any compensation payable under this Act otherwise than by way of annuity ;

and, with the consent of the Board of Trade, for the purpose of any payment by the Port Authority or of any work or other thing which the Port Authority are authorized to execute or do, and which or the cost of which ought, in the opinion of the Board of Trade, to be spread over a term of years.

(2) Money borrowed under this section may be borrowed in such manner as the Board of Trade may by order direct, and such money and the interest thereon shall be charged on the Port Fund, or on such property or revenues of the Port Authority, and in such manner as the Board of Trade may sanction.

(3) Any money borrowed under this Act, if borrowed for the purpose of—

(a) raising any money payable in respect of the transfer of the undertaking of any dock company under this Act ; or

(b) purchasing, redeeming, or paying off any debentures, mortgage debt, or other charge ; or

(c) raising any money payable in respect of the transfer under this Act of any undertaking affording or intended to afford accommodation or facilities for loading, unloading, or warehousing goods in the Port of London ; or

(d) constructing any works for improving the accommodation and facilities of the Port of London (other than dredging), or acquiring land for any such work ;

shall be repaid within such period not exceeding ninety

years, and, if borrowed for any other purpose, shall be repaid within such period not exceeding sixty years, from the date of the borrowing as the Port Authority with the consent of the Board of Trade may, having regard to the circumstances of each particular case, determine.

(4) For the purpose of paying off a loan raised under this Act, the Port Authority shall have the like powers of re-borrowing as a County Council have under ^{51 & 52 Vict.,} Section sixty-nine of the Local Government ^{c. 41.} Act, 1888, and the provisions of that section, so far as they relate to re-borrowing, shall apply as if they were herein re-enacted and in terms made applicable to the Port Authority, and to the security on which the Port Authority are by or under this Act authorized to borrow.

19.—(1) For the purpose of enabling the Port Authority to raise money which they are authorized to borrow, and to issue any Port Stock which, by or under the provisions of this Act, is to be, or may be, ^{Issue of} issued, the Port Authority may create stock, ^{Port Stock.} to be called Port of London Stock, and in this Act referred to as Port Stock.

(2) The Port Stock so created shall consist of “A” Port Stock, bearing interest at three per cent., and “B” Port Stock, bearing interest at four per cent. per annum, and, if the Port Authority so determine, of other classes of Port Stock ranking *pari passu* with “B” Port Stock, and bearing interest at such rate as the Port Authority may resolve.

(3) “A” Port Stock and the interest thereon, and subject thereto all other Port Stock and the interest thereon, shall be charged on the Port Fund and on all the revenues of the Port Authority.

(5) The total amount of Port Stock created under this Act, and for the time being outstanding, shall not, unless Parliament otherwise determines, exceed by more than five million pounds the amount of Port Stock issued as the consideration for or in connection with the transfer of the undertakings of the Dock Companies.

21. The receipts of the Port Authority on revenue account

in any year shall be applied to the following purposes in the following order—

Order in which Revenue to be applied. (1) The payment of working and establishment expenses and the cost of the maintenance of the Port, and of the execution and performance of the powers and duties of the Port Authority (including, amongst other things, payments on account of pensions, superannuation allowances, and compensation payable to officers and servants) properly chargeable to revenue account :

(2) The payment of interest on “ A ” Port Stock and any arrears thereof :

(3) The payment of interest on other classes of Port Stock and any arrears thereof :

(4) The payment of interest on any loan raised by the Port Authority otherwise than by the issue of Port Stock :

(5) The payment of any sums required under this Act to be paid into any sinking or redemption fund, or otherwise towards the discharge of any capital liability :

(6) The payment into the reserve fund created under this Act of any sums required by this Act to be paid into that fund ;

and the balance, if any, shall be applicable to such purposes and in such manner for the benefit of the Port as the Port Authority may determine :

Provided that—

(a) The Port Authority shall be entitled at the end of the year to carry forward such sum as may be reasonably necessary for meeting current expenses ; and

(b) The payment of interest on any debentures, debenture stock, mortgage debts, and other charges, the liability for which is by this Act transferred to the Port Authority, and the payment of interest on and the repayment of such temporary advances as the Port Authority are by this Act authorized to obtain with a view to supplying funds immediately on and for five years after entering on the undertakings of the Dock Companies shall, so long as payable, rank before the payment of interest on “ A ” Port Stock ; and

(c) If the Board of Trade so direct, the payment of interest on a temporary loan, repayable in a period not exceeding two years (other than such a temporary advance as last aforesaid), shall rank *pari passu* with the payment of interest on any class of Port Stock ; and

(d) The certificate of the Auditor of the accounts of the Port Authority, subject to such variations as the Board of Trade may allow, shall be conclusive as to the amount available for any of the purposes aforesaid.

22.—(1) The Port Authority shall carry to a reserve fund such part of the receipts on revenue account as is available

Reserve Fund. for the purpose until the fund amounts to one million pounds, and if the fund is subsequently reduced below that amount the Port Authority shall carry to the fund so much of any such receipts as is required to restore the fund to that amount and is available for the purpose.

(2) The reserve fund so formed shall be applicable only towards meeting any deficiency on revenue account in any year : Provided that, if it is proved to the satisfaction of the Board of Trade that it is expedient to apply any part of it to any other purpose, the Board may by order authorize the Port Authority to apply so much thereof as may be specified in the order to such other purposes, subject, however, to such conditions (if any) as may be specified in the order.

(3) The sums paid into the reserve fund shall be invested in the prescribed manner.

24.—(1) As soon as may be after the end of each financial year of the Port Authority the accounts of the Port Authority,

Account and Audit. and any committee appointed by them, and of their officers, shall be made up to the end of that year and shall be in such form and contain such particulars as may for the time being be prescribed by the Board of Trade, and shall be audited by an Auditor appointed by the Board of Trade :

Provided that—

(a) The regulations made by the Board of Trade shall provide for the accounts of all sums expended by the Port

Authority in erecting, maintaining, and managing warehouses, and of all receipts in respect of the warehousing of goods, being kept distinct from the other accounts of the Port Authority, and for those accounts being audited as a separate section of the accounts of the Port Authority ; and

(b) In prescribing the form of accounts the Board of Trade shall have regard to the desirability of showing separately, so far as practicable, such items of receipts and expenditure on capital and revenue account as are wholly or mainly attributable to the dock undertakings of the Port Authority, and in particular the regulations shall provide that all receipts from port rates on goods discharged from or taken on board ships not within the dock premises of the Port Authority shall be shown separately from the receipts from port rates on goods discharged from or taken on board ships within such premises.

(2) The Port Authority shall give to the Auditors access to such books and documents as are necessary for the purposes of the audit, and shall, when required, furnish to him all vouchers and information requisite for that purpose, and shall afford to him all facilities for the proper execution of his duty.

(3) If the Auditor reports to the Board of Trade that the Port Authority have declined or neglected to comply with any of his recommendations or requirements, the Board may, if they think fit, after giving the Port Authority an opportunity of being heard, make an order, directing the Port Authority to comply with such recommendations and requirements, with or without modification, as may be specified in the order.

(4) Within fourteen days after completion of the audit the Port Authority shall publish an abstract of the accounts, together with any reports of the Auditor thereon, in some one or more London newspapers.

(5) The remuneration of the Auditor shall be such as the Board of Trade direct, and that remuneration and all expenses incurred by him in or about the execution of his duties, to such an amount as the Board of Trade approve, shall be paid by the Port Authority.

25. If the Board of Trade at any time consider it desirable that estimates should be submitted, and the accounts of the Port Authority made up and audited, more than once a year, the Board may make an order to that effect, and may by the order make such modifications in the provisions of this Act relating to the submission of estimates and the making up and auditing of the accounts of the Port Authority as may be necessary to give effect to the order.

Power of
Board of
Trade to
require
Estimates
and Audit
more than
once a year.

TERRITORIAL AND RESERVE FORCES ACT, 1907
(7 Edw. VII, c. 9.)

[2nd August, 1907.]

1.—(1) For the purposes of the reorganization under this Act of His Majesty's military forces other than the regulars and their reserves, and of the administration of those forces when so reorganized, and for such other purposes as are mentioned in this Act, an association may be established for any county in the United Kingdom, with such powers and duties in connection with the purposes aforesaid as may be conferred on it by or under this Act.

(3) Every such scheme shall provide—

(a) For the date of the establishment of the association ;

(b) For the incorporation of the association by an appropriate name, with power to hold land for the purposes of this Act without licence in mortmain.

2.—(1) It shall be the duty of an association when constituted to make itself acquainted with and conform to the plan of the Army Council for the organization of the Territorial Force within the county, and to ascertain the military resources and capabilities of the county, and to render advice and assistance to the Army Council, and to such officers as the Army Council may direct, and an association shall have, exercise, and

Powers and
Duties of
Associations.

discharge such powers and duties connected with the organization and administration of His Majesty's military forces as may for the time being be transferred or assigned to it by order of His Majesty, signified under the hand of a Secretary of State or, subject thereto, by regulations under this Act, but an association shall not have any powers of command or training over any part of His Majesty's military forces.

(2) The powers and duties so transferred or assigned may include any powers conferred on or vested in His Majesty, and any powers or duties conferred or imposed on the Army Council or a Secretary of State, by statute or otherwise, and in particular respecting the following matters—

(a) The organization of the units of the Territorial Force and their administration (including maintenance) at all times other than when they are called out for training or actual military service, or when embodied ;

(b) The recruiting for the Territorial Force both in peace and in war, and defining the limits of recruiting areas ;

(c) The provision and maintenance of rifle ranges, buildings, magazines, and sites of camps for the Territorial Force ;

(d) Facilitating the provision of areas to be used for manoeuvres ;

(e) Arranging with employers of labour as to holidays for training, and ascertaining the times of training best suited to the circumstances of civil life ;

(f) Establishing or assisting cadet battalions and corps and also rifle clubs, provided that no financial assistance out of money voted by Parliament shall be given by an association in respect of any person in a battalion or corps in a school in receipt of a Parliamentary grant until such person has attained the age of sixteen ;

(g) The provision of horses for the peace requirements of the Territorial Force ;

(h) Providing accommodation for the safe custody of arms and equipment ;

(i) The supply of the requirements on mobilization of the units of the Territorial Force within the county, in so

far as those requirements are directed by the Army Council to be met locally, such requirements where practicable to be embodied in regulations which shall be issued to County Associations from time to time, and on the first occasion not later than the first day of January, one thousand nine hundred and nine.

(j) The payment of separation and other allowances to the families of men of the Territorial Force when embodied or called out on actual military service.

(k) The registration in conjunction with the military authorities of horses for any of His Majesty's forces ;

(l) The care of reservists and discharged soldiers.

3.—(1) The Army Council shall pay to an Association, out of money voted by Parliament for army services, such sums as, in the opinion of the Army Council, are required to meet the necessary expenditure connected with the exercise and discharge by the Association of its powers and duties.

**Expenses of
Associations.**

(2) An Association shall submit to the Army Council annually, at the prescribed time, and may submit at any other time for any special purpose, in the prescribed form and manner, a statement of its necessary requirements, and all payments to an Association by the Army Council shall be made upon the basis of such statements in so far as they are approved by the Army Council.

(3) Subject to regulations under this Act, all money so paid to an Association shall be applicable to any of the purposes specified in the approved statements in accordance with which the money has been granted, but not otherwise except with the written consent of the Army Council :

Provided that nothing in this section shall be construed as enabling the Army Council to give their consent to the application of money to any purpose to which, apart from this section, it could not lawfully be applied, or to give their consent without the authority of the Treasury, in any case in which, apart from this section, the authority of the Treasury would be required.

(4) All other money received by an Association (except

such money, if any, as may be received by it for specified purposes) shall be available for the purposes of any of its powers and duties.

(5) An Association shall cause its accounts to be made up annually and audited in such manner as may be prescribed, and shall send copies of its accounts as audited, together with any report of the Auditors thereon, to the Army Council.

(6) Regulations made for the purposes of this section shall be subject to the consent of the Treasury.

(7) The members of an Association shall not be under any pecuniary liability for any act done by them in their capacity as members of such Association in carrying out the provisions of this Act.

4.—(1) Subject to the provisions of this Act, the Army Council may make regulations for carrying this part of this Act into effect, and may by these regulations, amongst
Regulations. other things, provide for the following matters—

(a) For regulating the manner in which powers are to be exercised and duties performed by Associations, and for specifying the services to which money paid by the Army Council is to be applicable :

(b) For authorizing and regulating the acquisition by or on behalf of an Association of land for the purposes of this Act and the disposal of any land so acquired :

(c) For authorizing and regulating the borrowing of money by an Association :

(d) For authorizing the acceptance of any money or other property, and the taking over of any liability by an Association, and for regulating the administration of any money or property so acquired, and the discharge of any liability so taken over :

(e) For facilitating the co-operation of an Association with any other Association, or with any Local Authority or other body, and for providing by the constitution of joint committees or otherwise for co-operative action in the organization and administration of divisions, brigades, and other military bodies, and for the provision of assistance by one Association to another :

(f) For affiliating cadet corps and battalions, rifle clubs, and other bodies to the Territorial Force or any part thereof :

(g) For or in respect of anything by this part of this Act directed or authorized to be done or provided by regulations or to be done in the prescribed manner :

(h) For the application for the purposes of this part of this Act, as respects any matters to be dealt with by regulations, of any provision in any Act of Parliament dealing with the like matters, with the necessary modifications or adaptations, and in particular of any provisions as to the acquisition of land by or on behalf of volunteer corps.

(2) All regulations made in pursuance of this part of this Act shall be applicable to all Associations, except in so far as may be otherwise provided by the regulations or by any scheme made under this part of this Act.

(3) All regulations made under this part of this Act shall be laid before both Houses of Parliament as soon as may be after they are made.

5.—(1) Any County Associations may from time to time join in appointing out of their respective bodies a Joint Committee for any purpose in respect of which they are jointly interested.

**Joint
Committees of
Associations.**

(2) Any Association appointing a Joint Committee under this sub-section may delegate to it any power which such Association might exercise for the purpose for which the Committee is appointed.

(3) Subject to the terms of delegation any such Joint Committee shall in respect of any matter delegated to it have the same power in all respects as the Associations appointing it.

(4) The costs of a Joint Committee shall be defrayed by the Association by whom it has been appointed, in such proportion as may be agreed between them, and the Accounts of such Joint Committees and their officers shall for the purposes of the provisions of this Act be deemed to be Accounts of the Associations appointing them and of their officers.

In accordance with the power conferred by this Act, the Army Council have issued regulations for the Territorial Force and for

County Associations, and the following are those relating to the accounts of County Associations and their audit—

707. The correspondence of County Associations with the War Office will be sent direct, except on matters relating to the supply of or the loss or deficiency of public equipment which should be sent through the G.O.C.-in-C. Office. Claims for grants and applications for payments, and routine matter connected therewith, will go to the local Auditor of the command for action.

734. The income of an Association from public funds will be regulated by the Army Council on the principle of payment by results ; but the Association will itself administer and conduct its expenditure, subject only to audit by a professional Accountant, and to the rendering of an annual statement of Accounts for the information of the Army Council.

735. To enable an Association to meet the necessary expenditure connected with the exercise and discharge of its powers and duties, grants will be made from Army funds as detailed in Sections 1 and 2. The services which these grants cover are detailed in pars. 807 and 808.

736. In the event of the Army Council being satisfied that any unit or portion thereof has not proved itself efficient in any year, or that irregularities have occurred in its administration, they may withhold from the Association such proportion of the grants in respect of such unit as they may think fit.

764. Use of ranges belonging to County Associations should be granted to regular troops and reservists, provided the ranges are not required at the time for use by men of the Territorial Force. No charge should be made in respect of rent. As, however, the establishment grants include a sum for the normal upkeep of targets, firing points, etc., adjustment will be necessary where members of the Territorial Force use War Department ranges and where regulars or reservists use Territorial Force ranges. This adjustment will be made at the rate of 1s. 3d. per 100 rounds fired.

The local Auditor will authorize the issue of an additional grant to County Associations for all War Department use of Territorial Force ranges, and will claim a refund for all Territorial Force use of War Department ranges. Certificates showing the total number of rounds fired, for which adjustment is necessary, will be forwarded to the local Auditor by G.Os.C. and County Associations at the close of each musketry season.

Cases in which payments are required for the employment of markers will be exceptional and will be adjusted by arrangement between G.Os.C. and County Associations.

776. An Association will be permitted after the 1st April to draw such advances as may be approved up to a maximum of three-fourths of the approved estimate. Applications to be made on A.F. N 1546 to the local Auditors of the commands.

777. The grants earned will be claimed from the local Auditor on the succeeding 15th November (on A.F. N 1545, showing the names, etc., of the units), the claim being supported by the certificates required under the terms laid down for each grant. Expenditure under pars. 767A and 767B will be claimed at the same time—claims under par. 767A being supported by the approval of the G.O.C., and those under par. 767B by a statement showing the number of men raised at each station where the casual hirings have been made.

778. As soon as possible after the 15th November the actual sum due for the year will be assessed and the balance due will be issued to the Association before the close of the financial year.

In order to avoid delay in issuing such balance separate claims may be rendered in advance for the grants which are not based on the number of qualified men.

In the event of a difficulty arising as regards any particular units the claims for such units may be rendered separately from the general claim, which should not be delayed on their account.

795. The grants under pars. 779 to 794 will be claimed, on A.F. N 1543 or N 1548, from the local Auditor of the command as soon as possible after the termination of the annual training in camp, extra camp training or other exercises. The claims on A.F. N 1543 will be supported by A.Fs. N 1543A and N 1543B.

796. An advance of funds may, if required, be issued to the extent of two-thirds of the amount which will probably become due. Application to be made on A.F. N 1544 to the local Auditors of the command.

801. Every sum payable by a man of the Territorial Force under the rules of the Association, and every fine recovered from him on prosecution before a Court of Summary Jurisdiction, will be credited to the public funds of the Association of the County for which he was enlisted.

802. An Association will, subject to the approval of the Army Council, frame a scale of payments to be made by men of the Territorial Force who wish to resign before the end of their current term of service. The payments must not in any case exceed £5, and should vary with the length of service uncompleted on the current engagement.

803. All fines for offences are recoverable on prosecution before a Court of Summary Jurisdiction. Any expenditure incurred in connection with their recovery will

Fines. be defrayed from the funds of the Association.

804. An Association may pay out of the funds at its disposal such reward as it may think fit within a maximum limit of 10s., or 15s. in exceptional cases, to any person who

Rewards. may give such information as may lead to the conviction of a man who has committed one of the following offences—

(a) Absence without leave from preliminary training or annual training.

(b) Improper enlistment or attempt to enlist in the Territorial Force while belonging to that force.

(c) Presenting himself for enlistment in the Territorial Force and denying his former service, or improperly serving in the Territorial Force after discharge for bad conduct or physical unfitness from the Royal Navy, Regular Forces (including the Royal Marines), or the Territorial Forces.

In fixing the amount of the reward the association will be guided by the circumstances of each individual case, and by the recommendation (if any) of the magistrate.

805. To enable Associations to meet the cost of the equipment which they are required to provide on mobilization, special grants at rates shown in the Mobilization Store Tables

Mobilization. will be made from army funds, on the order to mobilize being given, to meet the cost of the stores (other than vehicles or harness) to be provided by County Associations, in accordance with Section XIII of the Equipment Regulations, Part 3.

In fixing the grants allowance has been made for the fact that some of the stores may have to be purchased at retail prices.

No expenditure on purchase or storage of mobilization equipment to be provided by County Associations is to be incurred, until instructions are given by the Army Council.

The rates shown in Mobilization Store Tables will be revised periodically with those tables.

805A. To enable Associations to meet the cost of the provision of clothing and personal equipment in accordance with par. 506E, and Equipment Regulations, Part 3, for men enlisted on mobilization to complete the war establishments of general hospitals, a grant will be made, on the order to mobilize being given, at the rate per man of—

£2 6s. for clothing.

9s. for personal equipment.

805B. A grant will also be made to County Associations on mobilization to provide for the sharpening of swords as directed in par. 48 of the Equipment Regulations, Part 3, to be performed on mobilization. The amount will be calculated at the rate of 2d. per sword held by units in accordance with Table 1, Equipment Regulations, Part 3, and will include the cost of provision of whetstones. The grant will be made in respect of officers' swords, but no allowance will be made in respect of any swords retained for ceremonial use.

Sharpening
swords.
A.O. 267.
1914.

806. All grants paid to an Association, whether in respect of units or individuals, are the property of the Association and not of any unit or individual.

807. The grants paid to an Association under Item D of the Annual Estimate (Lands and Buildings: rent, repairs, etc.), may not be expended on any other object without the consent of the Army Council.

Grants are
Association
property.
Expenditure.
Services on
which funds
may be
expended.

808. With the exception of the grants referred to in par. 807, the public funds of an Association may be expended at the discretion of the Association on any of the following approved services, but for no other purposes without the written consent of the Army Council. No part of such public funds is specially allocated to any particular purpose or unit; the allocation of grants among units, and, within the approved limits, the objects to which they are to be devoted, rest entirely in the discretion of the Association—

The provision of furniture, fuel, light, cleaning, etc., and miscellaneous expenditure for buildings, ranges, riding schools and drill grounds, etc., including payment of markers.

General administrative and orderly room expenses.

Insurance of arms.

Care, cleaning, etc., of arms.

Cost of supplying and maintaining authorized articles of clothing, other than for permanent staff and cadet corps or battalions, equipment and accoutrements, harness and saddlery, extra ammunition and engineer stores if required, and horses.

Recruiting expenses and rewards for conviction of absentees, etc.

Postage and stationery (including recruiting posters). Band and prize expenses, within reasonable limits.

Miscellaneous expenditure, including travelling in connection with drill outside the annual training in camp.

Expenses of County Association Organization, e.g. salary of Secretary, etc., office, travelling expenses of members to meetings where authorized by the Association, and contingent expenses.

Hiring horses, cycles, and wagons during peace, and compensation, insurance, etc., under pars. 798 to 800A.

No payment to officers or men of the Territorial Force for attendance at drills or musketry practice will be admitted against the public funds.

808A. Where Associations have an ascertained surplus on the Balance Sheet of the preceding year, expenditure will be permitted on such additional services as may be sanctioned by the Army Council.

809. Payments may be made from Association Funds to members of the permanent staff for work not strictly within their primary military duties as defined in par. 310. (For details of such work see par. 202.)

Payment
to Permanent
Staff.

N.B.—Such details are: He may be entrusted with the custody of articles of Government or Association property belonging to the Unit, or be employed as caretaker of a rifle range, or be charged with such other military duties as are compatible with his position as a N.C.O., as, for instance, orderly-room work, superintending the cleaning of guns, harness and arms, keeping them in order when cleaned, and looking after clothing and accoutrements in the regimental stores.

810. The maximum payments admissible in respect of such duties is in normal cases 3s. 6d. a week. In the following cases higher payments may be made at the Associations' discretion—

(1) Instructors in charge of—

(a) R.G.A. companies, coast defences, of a strength of not less than 160.

(b) Two companies of infantry.

(c) The headquarters company, or two brigade companies of a divisional transport and supply column.

(d) A field ambulance (not mounted brigade).

(2) Instructors in charge of—

(a) Three companies of infantry.

(b) Three companies of a divisional transport and supply column.

In cases under (1) the maximum admissible will be 4s. 6d. a week, and in those under (2) the maximum admissible will be 5s. 6d. a week. Special approval may also be given by the Army Council for payment in excess of 3s. 6d. a week in certain coast defence units R.E. where the work and responsibility is exceptionally heavy.

811. The salaries of the secretary and other paid officers of the Association, the fees of surveyors, and the fees of

Salaries to be
approved.

Auditors appointed to audit the accounts, form a charge against its public funds. The remuneration

will be fixed by the Association, subject to the approval of the Army Council.

812. Associations will be indemnified by the Army Council against loss by fire on arms, government stores and all Association property kept in buildings occupied with the express sanction of the War Office, and should not insure. If such property is kept in other buildings, or retained by individuals, Associations will not be indemnified, but a charge for insurance will be admitted against

A.O. 267

1914.

Association funds. Associations should take reasonable precautions against fire and provide any apparatus which they consider necessary to safeguard their property. Associations will, in any case, be held responsible for making good any loss of stores, arms, etc., not kept in authorized buildings. When claims for compensation for loss by fire arise, the proceedings of the court of inquiry should be accompanied by A.Fs. G 998, duly completed in every particular, and distinguishing between public equipment, Association property and private property.

The indemnity given under this paragraph does not cover telephone installations and is limited to public equipment and Association property. If articles of private or personal property (including mess and canteen property) are left in authorized buildings, insurance should be effected by the owners unless they are prepared to accept the risk of loss.

Associations will be indemnified by the Army Council against any liability for loss by fire or buildings held by them with War Office sanction. Consequently they should not insure such buildings unless compelled to do so by a covenant, under a lease, which the lessor refuses to waive in view of the War Office indemnity. In the latter case the loss of insurance may be charged under Grant D. Every endeavour should, however, be made to avoid covenants providing for insurance.

The above rule respecting buildings held with the War Office sanction does not apply to buildings vested in Trustees (other than Associations) for the benefit of Territorial Force units or detachments. In these cases the Trustees are not indemnified either by the War Office or by Associations. If, in carrying out the obligations of their trust, the Trustees insure the premises, the cost of insurance will be admitted as a charge under Grant D, if not covered by a rent charge.

812A. New buildings under erection and buildings that are handed over to a contractor for the carrying out of extensive alterations should be insured by the contractor, the policy being taken out in the names of the Association and the contractor.

Any fixtures, equipment or furniture necessarily left in such buildings during alterations should also be included in the policy.

Provisions should be made for the cost of insurance to be included in the tender.

The insurance policy and receipts for premium should be produced by the contractor.

813. Claims for deficiencies or damage to public equipment held on charge by units will be made through the County Association concerned. Charges on account of such damage or deficiency will not be admissible against the public funds of the Association, but if they have difficulty in obtaining the sums claimed from the unit, the case may be reported to the G.O.C.-in-C.

Apart from claims for deficiencies or damage to public equipment, any claim for compensation, or other expenses, connected with damage committed by a unit or member of the Territorial Force at times other than the annual training in camp, may be met out of the funds of the Association, and recognized as a charge against the grants, unless it can be met by any policy of insurance, or is attributable to the carelessness of an individual.

814. An Association is authorized to receive sums of money from private sources either for general or for specific purposes. When not received by it for a special purpose, such sums will be available for the purposes of any of its powers and duties.

815. When any expenditure of an extraordinary character, or involving an excess on the grants received during the current year is contemplated, the sanction of the Army Council must first be obtained. In applying for this sanction the manner in which it is proposed to meet the liability must be clearly stated.

816. If, owing to unforeseen circumstances, the liabilities incurred by an Association during any year should exceed its grants from public funds and the deficit cannot be made good, every effort must be made to extinguish the debt before the close of the following financial year.

817. An Association as a whole will be subject to such liability as attaches to a corporate body, but the individual members will be under no pecuniary liability for any act properly done by them as members of the Association in carrying out the duties assigned to them by the constitution of the Association.

818. An Association should delegate to C.Os. of units as their agents such powers of local administration, and should hand over to them such portions of the public grant as they may deem advisable, but it will not thereby be in any way relieved of liability for the proper administration of all funds entrusted to it.

819. Similarly, the responsibility of the Association for public property entrusted to it will remain unaffected, although C.O.'s and others may be authorized to requisition, receive and hold such property on its behalf.

820. The grants made to an Association will be paid into a bank to the account of the Association. These funds will be kept distinct from any private or regimental account, or from any account of funds arising from private subscriptions.

821. The Association will keep an account of all sums received from the Government, and of the full expenditure on the services specified in par. 808. All expenditure will be supported by the necessary vouchers.

Cash records.

Money
from private
sources.

822. An account of the receipt and expenditure of money received from private sources, either for general or specific purposes, will be kept on a suitable form and duly audited.

Accounts
balanced
yearly.

823. The accounts of an Association will be balanced on the 31st March in each year, and a statement on A.F. N 1524 will be prepared by the Association as soon after that date as

practicable.

824. The accounts will be audited by a professional Auditor, appointed subject to the approval of the Army Council. The

Auditor.

Auditor will ascertain that the grants from public funds have been appropriated only to the approved purposes specified in par. 808, and that all charges are duly vouched. He will also ascertain that proper provision has been made, by sinking fund or otherwise, for the renewal of harness, saddlery, clothing and equipment and that the Association is shown by its accounts to have in its possession stocks of clothing and personal equipment sufficient to equip the full establishment of the units under its administration to the authorized scales. He will not be a person concerned in any way with keeping the accounts of the Association, nor will he be a member of it. The Auditor must be a member either of an Institute or Society of Chartered Accountants in the United Kingdom or of the Incorporated Society of Accountants and Auditors. Should an Association desire to change its Auditor, the reasons for the change should be submitted to the Army Council before any action is taken.

825. The statement of accounts indicated in par. 823 will be forwarded to the Army Council not later than 1st July in each year, together with the report of the Auditor.

Any observations or explanations which the Association may

be in a position to offer in regard to points raised by the Auditor should be forwarded at the same time.

Investigation of position. 826. The Army Council reserve the right to investigate the financial position and administration of an Association, or to call for any vouchers relating to its public accounts.

Charges disallowed. 827. Should the Army Council, in consideration of the Auditor's report, decide that a charge cannot be allowed against the public grants of an Association, the charge must be met from moneys other than those voted by Parliament.

Force, when training, entitled to pay and allowances. laid down. 828. The fundamental principle laid down in Parliament is that when the Territorial Force is "training" it is entitled to the pay and allowances laid down by regulation. At other times it will be administered by the County Associations. It is equally a fundamental principle, therefore, that the public funds administered by the Association should be kept absolutely distinct from those allotted to the G.O.C.-in-C.

The following Regulations are in force as to the accounts and audit of the regimental funds of a Territorial Unit—

Regimental funds. 39. A C.O. is responsible for the proper application of all regimental funds, and will supervise and control the committees formed for their management. As soon as the accounts for the year are ready, the C.O. of each unit will assemble an Audit Board, consisting of the three next senior officers present at headquarters.

Yearly Audit Board. The Board will examine all vouchers, and will satisfy themselves that liabilities are not omitted from the Balance Sheet, that assets are not overestimated, and that the cash credits are actually available.

The balance of the funds will be entered in the proceedings, which will be made out on A.F. A 2, and the Board will record thereon that these instructions have been carried out. The proceedings will be laid before the C.O. for approval, and placed before the inspecting officer at his annual inspection.

THE WAR CHARITIES ACT, 1916 (6 & 7 George V, c. 43.)

1.—(1) It shall not be lawful to make any appeal to the public for donations or subscriptions in money or in kind to

any war charity as hereinafter defined, or to raise or attempt to raise money for any such charity by promoting any bazaar, sale, entertainment or exhibition, or by any similar means, unless the charity is registered under this Act and the approval in writing of the Committee or other governing body of the charity has been obtained, either directly or through any person duly authorized to give such approval on behalf of such governing body, and if any person contravenes the provisions of this section he shall be guilty of an offence against this Act.

**Prohibition
against
raising money
for War
charities unless
registered.**

2.—(7) Any expenses incurred by a Council as registration authority under this Act may be paid out of any fund or rate out of which the expenses of the Council are payable.

(8) Any expenses incurred by the London County Council under this Act shall be defrayed out of the County Fund as expenses for general County purposes.

3. Charities registered under this Act shall comply with the following conditions—

(i) the Charity shall be administered by a responsible Committee or other body consisting of not less than three persons ; and minutes shall be kept of the meetings of the Committee or other body in which shall be recorded the names of the members

**Conditions to
be complied
with by
registered
Charities.**

of the Committee or other body attending the meetings ;

(ii) proper books of account shall be kept, and such Accounts shall include the total receipts and the total expenditure of any collection, bazaar, sale, entertainment, or exhibition held with the approval of the governing body of the Charity, and the Accounts shall be audited at such intervals as may be prescribed by regulations under this Act by some person or persons approved by the registration authority, and copies of the accounts so audited shall be sent to the Registration Authority ;

(iii) all moneys received by the Charity shall be paid into a separate account at such bank or banks as may be specified as respects the Charity in the register ;

(iv) such particulars with regard to accounts and other

records as the registration authority or the Charity Commissioners may require shall be furnished to the Registration Authority or the Charity Commissioners, and the books and accounts of the Charity shall be open to inspection at any time by any person duly authorized by the Registration Authority or by the Charity Commissioners.

4. The Charity Commissioners may, subject to the approval of the Secretary of State, make regulations—
Regulations.

(a) prescribing the forms for applications under this Act and the particulars to be contained therein ;

(b) prescribing the form of the Registers to be kept under this Act and the particulars to be entered therein ;

(c) providing for the inspection of Registers and lists kept under this Act, and the making and furnishing and certification of copies thereof and extracts therefrom ;

(d) prescribing the fee (not exceeding ten shillings) to be paid on registration, and the fees for making or obtaining copies of, and extracts from, registers and lists ;

(e) requiring notification to the Registration Authority of any changes requiring alterations in the particulars entered in the Register ;

(f) providing for the exemption of Charities from this Act and prescribing the grounds of exemption ;

(g) generally for carrying this Act into effect.

8. If any person in any application for registration or exemption or in any notification of any change requiring alterations in the registered particulars makes

**False State-
ments, etc.**

any false statement or false representation, or if any person falsely represents himself to be an officer or agent of a war charity, or if he fails to send any notification which he is required under this Act to send, he shall be guilty of an offence against this Act.

Extent. (2) This Act shall not extend to Ireland.

REGULATIONS MADE BY THE CHARITY COMMISSIONERS, AUGUST 24, 1916, AND APPROVED BY THE SECRETARY OF STATE, AUGUST 25, 1916, UNDER SECTION 4 OF THE WAR CHARITIES ACT, 1916 (6 & 7 GEO. 5, c. 43).

1. In these Regulations, unless the contrary intention appears—
 (a) The expression “the Commissioners” means the Charity Commissioners for England and Wales.

(b) The expression “the Act” means the War Charities Act, 1916.

(c) The expression “the Register” means the Register kept by a Registration Authority under the Act.

(d) The expression “Committee” means the Committee or other body responsible for the administration of the Charity.

2. These Regulations shall have effect subject to the provisions of the Act.

4. The Register shall contain the following particulars with regard to every Registered Charity—

(a) The name of the Charity.

(b) Date of establishment.

(c) The precise objects of the Charity.

(d) The address of the administrative centre of the Charity.

(e) The name and address of the Secretary.

(f) The name and address of the Treasurer.

(g) The full names, addresses, and descriptions of the Chairman and two other members of the Committee.

(h) The name and address of the bank or banks at which the account of the Charity is kept.

(i) The name and address of the Auditor.

(j) The date of application for registration.

(k) The date of registration, and

(l) (if a Charity be removed from the Register) the date of removal.

9. Every Account of a Registered Charity at a Bank shall be kept in the name of the Charity.

13. Duly audited accounts of every Registered Charity shall be sent to the Registration Authority at least once in every period of three months.

16. A Registration Authority may exempt from the provisions of Section 1 of the Act only Charities the scope of whose operations as regards the amount of subscriptions expected to be received, the duration of the charities, or the area of collection or benefit is so limited as in the opinion of the Authority to make it unnecessary in the interests of the public that the Charity should be registered under the Act.

17. If the bazaar, sale, entertainment, or exhibition is promoted to raise funds for a registered Charity, one of the conditions which the Committee or other Governing Body of the Charity shall impose in giving the approval required by Section 1 of the Act shall be that an account of all receipts and expenditure in connection with the bazaar, sale, entertainment, or exhibition shall be rendered to them.

REGULATIONS MADE BY THE CHARITY COMMISSIONERS, OCTOBER 31, 1916, AND APPROVED BY THE SECRETARY OF STATE, NOVEMBER 3, 1916, FURTHER AMENDING THE REGULATIONS APPROVED BY THE SECRETARY OF STATE, AUGUST 25, 1916, UNDER SECTION 4 OF THE WAR CHARITIES ACT, 1916 (6 & 7 GEO. 5, c. 43).

A Registration Authority may exempt from the provisions of Section 1 of the Act only Charities the scope of whose operations as regards the amount of subscriptions expected to be received, the duration of the Charities or the area of collection or benefit is so limited as in the opinion of the Authority to make it unnecessary in the interests of the public that the Charities should be registered under the Act: and if at any time it appears to the Authority that the character of an exempted Charity has materially altered in any of the above respects the Authority shall withdraw the exemption.

THE LARCENY ACT, 1861
(24 & 25 Vict. c. 96.)

[6th August, 1861.]

82. Whosoever, being a Director, Public Officer, or Manager of any Body Corporate or Public Company, shall as such receive or possess himself of any of the property of such Body Corporate or Public Company otherwise than in payment of a just debt or demand, and shall, with intent to defraud, omit to make, or to cause or direct to be made, a full and true entry thereof in the Books and Accounts of such Body Corporate or Public Company, shall be guilty of a misdemeanour, and being convicted thereof shall be liable, at the discretion of the Court, to any of the punishments which the Court may award as hereinbefore last mentioned.

Or keeping
Fraudulent
Accounts.

83. Whosoever, being a Director, Manager, Public Officer, or member of any Body Corporate or Public Company, shall, with intent to defraud, destroy, alter, mutilate, or falsify any book, paper, writing, or valuable security belonging to the Body Corporate or Public Company, or make or concur in the making of any false entry, or omit or concur in omitting any material particular, in any Book of Account or other document, shall be guilty of a misdemeanour, and being convicted thereof

Or wilfully
destroying
Books.

shall be liable, at the discretion of the Court, to any of the punishments which the Court may award as hereinbefore last mentioned.

84 Whosoever, being a Director, Manager, or Public Officer of any Body Corporate or Public Company, shall make, Or publishing Fraudulent Statements. circulate, or publish, or concur in making, circulating, or publishing, any written Statement or Account which he shall know to be false in any material particular, with intent to deceive or defraud any member, shareholder, or creditor of such Body Corporate or Public Company, or with intent to induce any person to become a shareholder or partner therein, or to intrust or advance any property to such Body Corporate or Public Company, or to enter into any security for the benefit thereof, shall be guilty of a misdemeanour, and being convicted thereof shall be liable, at the discretion of the Court, to any of the punishments which the Court may award, as To be punished. hereinbefore last mentioned.

THE LARCENY ACT, 1916
(6 & 7 George V, c. 50.)

[31st October, 1916.]

20. (1) Every person who—

(ii) being a Director, Member or Officer of any Body Corporate or Public Company, fraudulently takes or applies for his own use or benefit, or Directors, etc., Fraudulently Appropriating Property. for any use or purposes other than the use or purposes of such Body Corporate or Public Company, any of the property of such Body Corporate or Public Company . . .

Shall be guilty of a misdemeanour, and on conviction thereof liable to penal servitude for any term not exceeding seven years.

THE FALSIFICATION OF ACCOUNTS ACT, 1875
(38 & 39 Vict., c. 24.)

[29th June, 1875.]

1. If any Clerk, Officer, or Servant, or any person employed or acting in the capacity of a Clerk, Officer, or Servant, shall

wilfully and with intent to defraud, destroy, alter, mutilate, or falsify any book, paper, writing, valuable security, or account which belong to or is in the possession of his employer, or has been received by him for or on behalf of his employer, or shall wilfully and with intent to defraud, make, or concur in making, any false entry in, or omit or alter, or concur in omitting or altering, any material particular from or in any such book, or any document or account, then in every such case the person so offending shall be guilty of a misdemeanour, and be liable to be kept in penal servitude for a term not exceeding seven years, or to be imprisoned with or without hard labour for any term not exceeding two years.

**Punishment
for Falsifica-
tion of
Accounts, etc.**

A servant was convicted under this section on an indictment which charged him with making a false entry in an account. It was proved that the account in question did not belong to and was not in the possession of his employer. It was held by the Court of Crown Cases Reserved that the conviction must be quashed, since the intention of the Legislature, as manifested in the preamble to the Act, was to punish the falsification by clerks, officers, servants, or other of their employers' accounts.—*Rex v. Palin* [1906], 1 K.B. 7.

A clerk or servant out of the jurisdiction who fraudulently omitted to enter sums received by him on slips furnished to him for that purpose, and to transmit such slips by post to London, was convicted under this section.—*Rex v. Oliphant* [1905], 21 T.L.R. 416.

A servant may be convicted under this section who wilfully and with intent to defraud tampers with a mechanical instrument used by his employer for registering figures from which an account is subsequently prepared as between the parties.—*Rex v. Solomons* [1909], 2 K.B. 980.

**Intention to
Defraud
sufficient
Indictment.**

2. It shall be sufficient in any indictment under this Act to allege a general intent to defraud, without naming any particular person intended to be defrauded.

**Act to be
read with
Larceny Act,
1861.**

3. This Act shall be read as one with the Act of the twenty-fourth and twenty-fifth of Her Majesty, Chapter ninety-six,

CHAPTER V

THE PREPARATION OF THE ACCOUNTS OF A COMPANY FOR THE PURPOSE OF AUDIT

DUTY of the Directors and not the Auditors to prepare the Accounts—Auditors not liable to Directors—Form of Accounts to be submitted—Preliminary preparations—Stock-in-trade—Investments—Omission of Liabilities—Apportionments—Directors' Fees—Trial Balance—Difference between Trial Balance and Balance Sheet—Danger of relying on a Cash Account only—Employment of professional Accountants in preparation of Statements—Depreciation—Bad Debts—Special or unusual Expenditure—Mortgaged Property—Accounts to be passed at Special Board Meeting—To be afterwards submitted to Auditors—Issue of Accounts to Shareholders.

THE duty of the preparation of the Accounts of a Company to be laid before the Shareholders devolves upon the Directors, who entrust it either to the officials of the permanent staff, or they may employ professional Accountants at the expense of the Company. When these Accounts are prepared they have to be formally approved by the Directors at a Board Meeting, and in the case of a Company subject to the Companies (Consolidation) Act, 1908, they have to be signed on behalf of the Board by two of the Directors, or, if there is only one Director, by that Director. The Secretary should then intimate to the Auditors that the Accounts are ready for their examination. The preparation of these Accounts, forms no part of the duties of the Auditors, but in many Companies it is the practice for the Directors to give them instructions to prepare the Statements.

In this case, however, the preparation of the Accounts is not performed by them as Auditors, but solely as professional Accountants; they are paid a special fee for this duty, which is quite independent of their fee as Auditors, and they are consequently responsible as professional men to the Directors of the Company for the correct performance of their duties.

In no sense, however, are they liable to the Directors as Auditors for the correctness of the preparation of the Accounts, and, further, under no circumstances whatever is the responsibility for the correctness of the preparation shifted from the Directors of the Company. The contrary is frequently alleged by Directors, and their contention is accepted by Shareholders, but it must be clear from the words which appear in the Acts of Parliament, both public and private, and in Articles of Association of Companies, that the Accounts submitted to the Shareholders are the Accounts of the Directors. It is also clear that the duty of Auditors is strictly confined to the certification of the correctness or otherwise of the Accounts, and, in fact, the duties of the Auditors do not commence until the Accounts have been formally handed to them by the Directors, for examination by them on behalf of the Shareholders.

The Auditors of a Company are the Auditors of the Directors and are not the Auditors of the staff of the Company on behalf of the Directors, as so many Directors imagine. It is their duty to satisfy themselves that the statements purporting to show the financial results of the administration of the Company's affairs by the Directors are correct, and if not correct so to inform the shareholders in their certificate.

Unless the form of the Accounts be specially prescribed by Act of Parliament, or by Articles of Association, the Statements which are to be issued to the Shareholders are in the discretion of the Directors, as are also the headings under which the various items of Income and Expenditure are to be placed in the Revenue or Profit and Loss Account, and the headings under which the Liabilities and the Assets of the Company are placed on the debtor or creditor side of the Balance Sheet. Where, however, the Auditor is required to certify to the Balance Sheet being full and fair, he has undoubtedly some right to require that a Balance Sheet, which in his opinion is unduly meagre, should be amplified when the Directors do not wish him to add a clause to his certificate calling attention to the fact.

Auditors not
liable to
Directors.

Form of
Accounts
usually in
discretion of
Directors.

The date on which the books of a Company, subject to the Companies (Consolidation) Act, 1908, are to be closed is frequently prescribed, but if not so prescribed, the date is left to the Directors, provided that there be an annual meeting of the Shareholders summoned once a year. The period embraced by the Accounts need not necessarily be those of an exact year; as a rule, however, the Accounts of a Company are made up on the same date in each year, except in those comparatively few cases where the Accounts are submitted to the Shareholders half-yearly.

**Date on
which Books
are to be
Closed.**

In the Articles of some Companies it is prescribed that the Accounts submitted at the annual meeting shall be made up to a date within a certain time of that meeting, usually not exceeding three months, in which case, where the Company has branches, either at home or abroad, great expedition has frequently to be used in the preparation of the Accounts after the receipt of the returns. In all cases, however, it is desirable for the Ledgers to be posted to date, and in the offices of many Companies it is the practice for a trial balance to be taken out monthly, and agreed, so that, should there be any error, it can at once be sought for and discovered, instead of having to wait until the end of the period.

Where the form in which the Accounts to be presented to the Shareholders is prescribed by Act of Parliament, as in the case of Railway, Life Assurance and other Companies, and Building Societies, these forms must be exactly followed. Where, however, it is left to the discretion of the Directors they are then entitled to present them to the Shareholders in any shape they may think proper, or in as full or as condensed a form as they may please, but occasionally even in these cases there are requirements prescribed by private Act of Parliament, or in the case of Limited Companies by the Articles of Association, which have to be as much attended to as the enactments of a public Act.

**Form of
Accounts.**

Those who have to prepare the Accounts must also have regard to any regulations which may exist for the form of

the Certificate to be affixed by the Auditor ; it must be evident that where an Auditor has to certify that a Balance Sheet is a full and fair Balance Sheet, he will be unable to do so should the Accounts presented to him be too much condensed.

Having decided on the date on which the financial period shall end, preparation should be made anterior to that date

for balancing the books, and for this purpose

**Preliminary
Preparations.**

they should all be written up to date, and, where possible, if there should be any fear of the books

not balancing at the first attempt, any spare time the clerks may have should be devoted to the calling-over of the postings, checking the additions, etc. At the close of business on the day prescribed or selected, as the case may be, the Cash Book should be ruled off and balanced, and a reconciliation statement with the Bankers' Pass Book should be prepared, showing the Cheques drawn on the Company's account but not presented at the Bankers, and the cheques paid in but not cleared. It is desirable to draw as few cheques as possible on the last few days of the period.

The Reconciliation Statement may be in the following form—

Name of Company.

Statement showing reconciliation of the balance shown in the Cash Book with the balance shown in the Banker's Pass Book.

(Date.)

Balance as per Pass Book	.	.	.	.	£3,842	7	6
Deduct Cheques drawn as under but not paid.							
Dec. 22nd (name)	.	.	.	.	£81	4	2
„ 26th (name)	.	.	.	.	23	1	7
„ 30th (name)	.	.	.	.	6	8	4
						110	14 1
						£3,731	13 5
Add Payments to Bank not cleared.							
Dec. 30th (name)	.	.	.	.	£246	3	6
„ 31st (name)	.	.	.	.	74	8	8
„ 31st (name)	.	.	.	.	26	5	2
						346	17 4
Balance as per Cash Book	.	.	.	.	£4,078	10	9

The Bankers should be requested to write direct to the Auditors, enclosing a certificate of the balance (or balances, if more than one account is kept at the Bankers), in hand at the close of business on the day up to which the Balance Sheet is made up.

When a Company holds inscribed stock as part of its investments, application should be made to all the banks or financial institutions and firms in whose books the various Stocks are inscribed to forward to the Auditors a certificate of the holdings of the Company at the close of business on the balancing date. Most of the banks keep forms for this purpose which are supplied on application. On page 403 is shown the form of request supplied by the Bank of England.

If it has not been the custom to have the Vouchers periodically arranged, they should now be sorted, and either arranged
Vouchers. in neat bundles in the order of the Cash Book entries, or else pasted in a guard book in the same order.

It must be remembered that simple acknowledgments of money received are not what Auditors understand as vouchers. Many Companies have their own printed form of receipt, which they require all persons to whom they make payments to sign. These receipts are not so satisfactory from an Auditor's point of view as those given on the Invoices themselves or taken from counterfoil receipt books bearing the name of the recipient thereon. An Auditor, however, must accept them if it is the practice of the office to supply them to their creditors when making payments. The object of vouching is for the Auditor to be satisfied, not only that a payment has been actually made, but to see at the same time that the amount has been posted to the proper account in the Ledger. It is therefore desirable for this reason that the actual invoices be affixed to the Receipts, but as in large Trading Companies, where the invoices as they come in are preserved in a different place to where the periodical Statements on which the payments are made are kept, it is very difficult, if not impossible, for the Auditor to ascertain that the expenditure has been properly classified.

*Request for the verification of Stock Accounts at the
Bank of England.*

This application must be forwarded to the Chief Accountant, Bank of England, two days before the verification is required.

PLEASE USE
COPYING INK.

A Fee of 6d. per Account, with a minimum charge of 1s. per Certified Statement, should accompany the application in respect of all securities except British Government and Guaranteed Securities and India Sterling Stocks and Rupee Securities (*see overleaf*).

Securities transferable by Deed should not be included as Register Certificates have been issued in respect of such holdings.

The particulars must be filled in by the applicant, and if there is more than one Account, the aggregate total must be shown.

-----19
*It is requested that the sub-
joined list of Stocks may be
verified, and be then forwarded
to—*

-----19
---- hereby authorize this appli-
cation.

of -----

To be signed
by a Stock-
holder in each
account; or, in
case of a Cor-
poration, by
the Chairman,
Secretary, or
other Officer.

At the close of business on the -----day of-----19--,
the undermentioned amounts of Stock were standing in the
names against which they are placed.

Names of Stockholders in full.	Amounts.			Names of Stocks.

Where stock has to be taken, the necessary arrangements should be made a few days previous to the close of the period, and most minute instructions given to those in charge of this important duty, so as to ensure correct quantity, measure, or weight being taken, according to the nature of the stock. The prices to be affixed against the items of the stock should be taken from the invoices. Remarks as to depreciation, caused through either any portion of the stock being damaged, or becoming less fashionable, or for any other reason, should be noted opposite each item. In the case of a large business with heads of departments, each head should be made responsible for his stocktaking, and he should sign each sheet of the Stock List, certifying that it has been taken under his supervision, and that, in his opinion, it is correct in every detail. He should also state what, in his opinion, should be allowed for depreciation.

It is very important for the Secretary, or other head official, to require those working under him in connection with the stocktaking to give certificates of this nature, as in the event of it being subsequently discovered that there has been an error, either accidental or intentional, in the stocktaking, he can place the blame on the right shoulders. It is, of course, understood that it is his duty to check, as far as possible, the work of his subordinates.

The Auditor is not responsible either for the taking or for the value placed upon the stock ; but it is the usual practice for him, by testing selected items, to ascertain whether the correct value has been placed upon it, when he will consider the notes made as to depreciation. If evidence be not produced to him that proper care has been exercised in taking and valuing the stock, he will probably consider it necessary to insert a clause to that effect in his Report, and point out that the responsibility rests with the Directors and Officials. It is not usual to insert this where the Auditor is satisfied that proper care has been taken in arriving at the amount taken credit for in the Balance Sheet.

When part of the assets of a Company is represented by investments, it is desirable that the Auditor be requested to

examine the Securities representing the investments before they are changed, and the same remark applies more especially in the case of Securities held against loans.

Investments.

It is usual in those cases where the Auditors are professional Accountants for them to attend immediately after the closing of the books, count the cash, verify the Bank balance, examine the Securities, and then withdraw until they are informed that the Balance Sheet and other Statements are prepared and the books ready for audit. It is always more troublesome for the Auditor to vouch for the correctness of the Securities after they have been changed, as he frequently has to work back through various cash transactions in order to satisfy himself that at the date of the Balance Sheet they were in the possession of, or under the control of, the officials of the Company.

For the purposes of the examination by the Auditor a list of Securities should be prepared, to which should be affixed the cost price, the price proposed to be taken credit for in the Balance Sheet, and the market price, so that the Secretary or some other officials can first of all place the correct value upon the Securities, and can consequently justify this valuation to the Auditors.

List of Securities.

Except in the cases of Banks, Discount Houses, and Financial Concerns it is not customary to revalue the Securities at each period of closing the books, and the following is the usual and the safest method of arriving at the proper amount to be inserted in the Balance Sheet as the value of the Investments, viz. : If the Securities have not depreciated since they were purchased, or are of greater value, the cost price is usually taken as the value for the Balance Sheet ; but if there has been a depreciation from the cost price, taking the investments as a whole, a Reserve should be made and charged against revenue to cover such depreciation.

Provided the stock has been taken on the day up to which the books are closed, the cash in hand examined on that day or the following morning, and the Securities examined before they are changed, the remainder of the audit can be done

more leisurely, and for many reasons it is not advisable it should take place in any hurried way.

It is exceedingly important for the Directors and other Officials of the Company that there should be no omission from the liabilities in the Balance Sheet, and in order to avoid this many Companies now adopt the plan of sending out a printed notice to their creditors asking for a statement of their account to be sent in for the purpose of verification for the audit, or to state the amount the Company believes it is indebted to them, with a request that if incorrect a notice should be immediately sent of any difference that may exist. In those cases where debts have been collected before the Accounts are finally settled, it is easier to calculate the allowances for discounts, and perhaps also for loss on realization of the debts.

Directors
should guard
against
omission of
Liabilities.

At the same time there should be no unnecessary delay between the date of the Balance Sheet and the meeting of the Shareholders at which the Accounts are submitted, and in many Companies the Articles of Association prescribe that not more than three months shall elapse between these two occurrences.

Before finally closing the books a list should be prepared of all matters in which apportionments may have to be made, having regard to the date on which the books are closed. In the case of certain items of expenditure—such as for rents, rates, insurance ; or, on the other hand, items of revenue, such as for interest or dividends on investments—the necessary calculations should be made of all the liabilities and income which have accrued due to the date of closing the Books. Where payments have been made by the Company in advance it may take credit for the proportion of the payment applicable to the period after the date on which the books are closed until its expiration. The Company may also take credit in its Revenue Account for interest accrued on investments where the rate of interest is fixed, and it is confidently expected it will be paid when due, such as that on Debentures, Mortgages,

Apportion-
ments.

etc. In the case of dividends on shares it may in some cases be allowable to take an estimated amount, basing it on the experience of the past, but this must be done cautiously, and the practice of so doing is not recommended.

The amount due for Directors' fees should also be agreed, and should for any reason the Directors determine to forgo

any part of these*fees, a minute should be made to that effect. Any amounts to which

Directors' Fees.

Directors may consider they are entitled, such as special remuneration, if allowed by the Articles, travelling expenses, etc., should be agreed with the Board, and, if not paid, inserted among the liabilities. As the Accounts submitted to shareholders are those of the Directors, any Director who is a party to passing them previous to submission to the Auditors will be estopped from recovering any payment from the Company in respect of a claim omitted therefrom. Having settled these matters, the proper Journal entries should be made, incorporating the results in the books of the Company.

When the Articles of Association provide that the Directors shall each receive a fixed sum per annum by way of remuneration for their ordinary services, it has been held that the fees are for a whole year's service, and are not apportionable.—*In re Central De Kaap Gold Mines*, 7 Manson, 82.

In November, 1919, the plaintiff agreed with an agent for an intended company to sell his business to that company, the payment to be partly in cash and the balance in debenture stock of the company. The agreement contained a clause providing "that the vendor shall be, and act as, one of the directors of the said company, and that his fees for so acting shall be £150 per annum." The Articles of the Company when formed, the defendant company, provided that the remuneration of the directors should be "at the rate of" £150 per annum, and such further sum (if any) as should be voted to them by the company in general meeting, and that such remuneration should be divided amongst the directors as they should determine, or, failing agreement, equally. The company on incorporation adopted the agreement and the plaintiff received the debentures, which contained a condition

entitling the company to pay them off at the expiration of six months. In December, 1919, the plaintiff was duly appointed a director to hold office so long as he held a certain amount of debentures in the company. Disputes having arisen between the plaintiff and the company, the plaintiff agreed to accept payment of all money due to him upon his debentures, and on 14th May, 1920, the debentures were paid off, and thereupon he ceased to be a director. In an action by the plaintiff to recover a proportionate part of the £150 as his fees for the period from December, 1919, to May, 1920, when he acted as director, the deputy county court judge gave judgment for the defendants, holding that the plaintiff was not entitled to remuneration for a broken part of a year. The Divisional Court reversed the decision of the deputy county court judge. On appeal—

Held (1) that the question of the applicability of the Apportionment Act, 1870, not having been raised in the county court, could not be raised on appeal.

(2) That neither under the agreement nor under the articles was the plaintiff entitled to the sum he claimed.

(3) That the Court would not in the circumstances of the case imply a term in the agreement that a proportionate part of the remuneration should be paid if the plaintiff's services terminated during a broken period of a year.

Decision of the Divisional Court, 1921, 1 K.B. 423 reversed.

Moriarty v. Regent's Garage and Engineering Company, Limited [1921], 2 K.B. 766.

As a result of this decision the Articles of Association of Companies since registered, and amended Articles of Association of Companies incorporated before this decision, usually contain a clause to the effect that the remuneration of each Director shall accrue from day to day.

Before preparing the Revenue or Profit and Loss Account and Balance Sheet, the balances of the Ledger Accounts, both personal and impersonal, should be taken out and a summary of them made, the debit and credit balances being in two separate columns.

Trial
Balance.

This is called a "Trial Balance," and when the totals of

the two columns (including the balances of the Cash Book and Petty Cash Book) coincide it is usually assumed to be correct so far as figures are concerned, and as a proof of the accuracy of the postings. From the "Trial Balance" the Revenue or Profit and Loss Account and Balance Sheet are prepared.

If after extracting the balances from the Ledgers the totals of the two columns do not agree, the difference must be sought for, and in many cases this proves a lengthy process. Before, however, calling over the postings a second time, the following attempts may be made to discover errors—

- (1) Ascertain if any items have not been "ticked."
- (2) Ascertain if the Ledger balances were correctly brought down at the commencement of the period.
- (3) Ascertain if the Ledger totals of debit and credit sides agree.
- (4) Re-check additions.

A frequent source of small errors is posting an amount consisting of shillings and pence only as if it were pounds and shillings or *vice versâ*.

The Trial Balance must not be confounded with the Balance Sheet ; the former contains merely the balances of the Ledger

Difference between Trial Balance and Balance Sheet.	Accounts (including the Cash Book balance), the total of the debit balances of which must agree with that of the credit balances. The Balance Sheet consists of the debit and credit
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balances of the Ledger after the Revenue or Profit and Loss Account has been closed, and the profit or loss, as the case may be, has been ascertained. In other words, it shows on one side the actual liabilities of the Company, including that to its own shareholders, represented by their Capital, and the Reserve or unappropriated profits ; while, on the other, are enumerated the debit balances, frequently and erroneously referred to as if they were always assets, as explained hereafter.

When no forms of Account are prescribed, a Profit and Loss Account, or Revenue Account, together with a Balance Sheet, are usually the only statements presented to the

meetings of shareholders of a Company, and these two Statements should in any event be submitted.

It would be exceedingly unwise for the Directors and Officials of a Company merely to prepare a Cash Account and place it before its shareholders for the purpose of a dividend being declared, based on a balance in hand at the end of the period. In a case where the Directors of a Company which had been in existence only eight months declared a

Risk of
relying on a
Cash Account
only.

bonus, James, L.J., said: "A bonus, which of course could only be lawfully made out of moneys which had been earned, or believed to have been earned, in the way of profit. . . . How was this done? Was there any attempt to make a Balance Sheet or Profit and Loss Account in such a way as any mercantile body, and certainly any Insurance Company, ought to have done? . . . The Directors simply had before them the cash balance of the receipts and payments, and, without making the slightest provision on that account for anything whatever, they proceed out of the balance to declare this bonus. I quite agree that it would have been different if there had been, as there ought to have been, in the ordinary course of business, a Balance Sheet *bonâ fide* made out with proper assistance, so as to ascertain the true state of the Company."—*Rance's Case, In re County Marine Insurance Co.*, 6 Ch. 104.

If it be found impossible from any cause whatever for the Officials of a Company to balance the books, the Directors are quite justified in instructing the Auditors, but in their capacity as professional Accountants, as already referred to, to balance the books, or they may, if so they prefer, employ another firm of professional Accountants for that purpose. The fee for this professional assistance should be included in the Revenue Account amongst the salaries or professional charges, as it must be distinctly understood that the fee voted at the meeting of Shareholders to the Auditors is for the audit alone, and does not throw upon the Auditors any duties whatever in assisting the Officials to balance the books or prepare the Accounts for audit. When the Trial Balance comes out the

Directors
may employ
Professional
Accountants.

same amount on both sides it is usually accepted as correct, but inasmuch as it has been frequently found that a small error may, on its being looked for, result in the discovery of very many larger ones, there is the slight chance that the Trial Balance may be wrong to the extent of errors of equal amount existing on both the credit and debit sides.

The Trial Balance having been agreed, the Profit and Loss Account and the Balance Sheet can be prepared therefrom.

As regards the former Account, this can be divided into two or three sections—for example, as a Trading Account and Profit and Loss Account—and sometimes this is prescribed by the Articles of Association. Where it is left to the discretion of the Directors of a Company, it is sometimes a question as to whether it is advisable in the interests of the Company to publish a Trading Account, having regard to the fact that the Accounts may fall into the hands of competitors. Where, however, there is no objection it is advisable to set out fully the transactions of the Company, as the more detail that is afforded to the Shareholders in the Accounts the less responsibility is attached to the Officials. Wherever a Trading Account is not published, the Profit and Loss Account will merely commence with the balance from the Trading Account. This is the gross profit, and here again the advisability of condensing the items of expenditure into as few headings as possible, or setting them forth fully, has for the same reasons to be considered.

Before finally settling the Profit and Loss Account, the question of allowances for depreciation has to be considered,

Depreciation. and this is a most important matter, and fraught with great responsibility and liability on the part of the Directors, Secretary, and Officials. Certain assets, such as leasehold property, concessions, and patents, become of less value each year solely through effluxion of time, while plant and machinery, stock-in-trade, tools, fittings, furniture, etc., gradually lose their value, more or less, according to the manner in which they are used. For this reason no Company can be said to have made a fair profit

until, in addition to the expenses of its business, there has been charged against the revenue a proper amount for depreciation in respect of this class of assets.

The usual method adopted for arriving at this amount is to take a percentage on the original cost price, and it is evident that this can only be properly done by dividing these assets

<p>Method of arriving at amount of Depreciation.</p>	<p>into various groups, the items in each approximating as near as possible to the number of years they will respectively last. In the case of long leaseholds and heavy plant and machinery, the depreciation naturally will be very small, as compared with that of short leaseholds, tools, driving bands, and small articles in everyday use.</p>
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A frequent method of arriving at the total amount to be written off for depreciation is the one which is, perhaps, the most thoroughly unsound which could be devised, viz., first ascertaining the profit without depreciation, then taking into consideration the amount of dividend which the Directors desire to pay, and leaving any balance available as the proper amount for depreciation. A more mischievous and unsound system could not be acted upon, or, from the Directors' and Officials' selfish point of view, a more foolish one. The object of Directors and Secretaries ought not to be to pay as high a dividend as possible, but to do exactly the reverse. A percentage on the capital paid away in dividend can never be recalled, while one retained in hand is always available. A Director who consents to agree to recommend a quarter per cent. more dividend than he is absolutely compelled is exceedingly foolish, while a Secretary who assists him is more foolish still. There is no doubt that thousands of Companies registered since the Act of 1862 came into existence have been wound up through this insane craze for paying high dividends, when lower ones would have contented the shareholders and preserved their capital for a longer period.

It may be argued that the Directors have no right, by writing off too much for depreciation in any one year, to minimize the profit of that year, and thus deprive shareholders, who may happen to be the holders of the shares

when the dividend is declared, and who may sell their shares afterwards, of that to which they are legitimately entitled.

False argument of some Directors. This theory is, surely, an entirely false one ; it is not incumbent upon the Directors to consider in any way individual shareholders, or a special

group of shareholders, and certainly not those who make a practice of buying and selling shares and holding them for short periods. It is their duty to keep the capital of their Company intact, and do their best to make it a permanent institution. With this view Directors and Secretaries should endeavour to eliminate the fictitious Assets from their Balance Sheets as soon as possible, and to replace them by investments which in bad times will enable them to pay a moderate dividend. In frequent instances Companies, after paying dividends of fifteen and twenty per cent. for years, have gone into liquidation within twelve months of their last high dividend, through their not having in hand a reserve out of which to meet a temporary depression in their particular line of business.

Directors and Officials, therefore, in simply looking at the matter from their own point of view, and doing their best to preserve their fees and their situations for years to come, are acting in the true interests of the shareholders as well as themselves. In further support of this, it is undoubtedly a fact that the shares of a Company that has paid fair dividends, and has a large Reserve, are more saleable and command higher prices than those of one that has paid large dividends, but cannot in its Accounts show that there is anything to fall back upon in case of emergency.

In settling, therefore, the amount of depreciation, the Directors should not take into consideration how the result of their decision will affect the dividend, or how the dividend will affect the market price of the Company's shares. Directors have nothing to do with the market price of the shares, and from the moment they commence to regard any question respecting the internal management of their Company from that point of view, it becomes almost impossible for them to do their duty honestly. They should ascertain the very fullest amount that ought to be chargeable for depreciation,

even if the result shows a loss, while a little difference would make a profit, and place the Accounts before the Shareholders without any attempt to make them look better.

The same remarks apply as to the amount to be charged against the Profit and Loss Account for losses likely to arise

Bad Debts. on the realization of the book debts ; the question should be carefully considered without any reference whatever to what will be the effect on the profit or loss. The amount of the debts which, in the opinion of the Secretary, are not likely to be collected should be entirely charged against the Account, and then a careful estimate should be prepared of the loss likely to arise on what is known as "doubtful debts." There is no fixed rule for adoption, every class of business has its own experience ; but a very common method is to charge a percentage on the total amount of the debts. There can be no objection whatever to this plan being adopted, provided the percentage be sufficiently high ; it is far better to create too large a Reserve than too small a one.

The Articles of Association of some Companies contain a clause allowing the Directors to spread any special expenditure over several years, leaving the balance

**Spreading
Expenditure
over a Term
of Years.**

of the amount not charged against Revenue on the credit side of the Balance Sheet. In the absence of such a clause, it is believed that it is quite within the power of Directors to "spread" expenditure which, in their opinion, will have a beneficial effect on the income of the Company for several years to come, and when it would be unfair on the income of the year during which the expenditure is incurred to have to bear the whole of such expenditure. The greatest care must, however, be exercised in so acting, as there can be no doubt the only justifiable way of treating expenditure in this manner is when it is fully expected that the outlay will benefit the Revenue of future years, against the income of which the balance will be charged. It is extraordinary how fond many Boards of Directors and Secretaries are of treating any special expenditure in this manner ; one would think their great anxiety

would be not to have items of this nature on the credit side of their Balance Sheet.

The invoices connected with expenditure of this nature should be carefully preserved, as the Auditor may refuse to allow any expenditure to remain on the credit side of the Balance Sheet without comment, unless it is proved clearly to his satisfaction that it is of a nature which may properly be so treated.

The question as to how to deal in the Accounts with items representing property encumbered by mortgages, and the personal accounts of the mortgagees, is frequently a subject of argument. There can be no doubt that the strictly proper way in stating these items in a Balance Sheet is to place the amount standing at the credit of the mortgagees in short on the debtor side of the Balance Sheet, stating there, also in short, the value of the property, and including in the credit side the estimated surplus value of the properties after paying off the debts upon them. It is wrong to place the values of any encumbered property among the free assets without a distinct reference, either immediately after them or in a foot-note, that they are hypothecated. This practice is not, however, so objectionable when there is a reserve exceeding in amount the secured loans.

The Revenue or Profit and Loss Account and Balance Sheet, having been finally settled, should be placed by the Secretary before a Board meeting of the Directors, reference being made thereto in the Agenda Book, and the notice convening the meeting should also inform the Directors that part of the business is to consider these Statements. Should any of the Directors, either on their own initiation or prompted by any other Official of the Company, object to these Statements as being, perhaps, too severely drawn, the others should use all their influence to prevent any alterations, and if finally the majority of the Board alter the Accounts to an extent with which some may not be satisfied, the latter should require their objections to be entered in the minutes, so as to relieve themselves of any responsibility in the future.

The Accounts, having been approved by the Board, should

then be signed by the Chairman, and another Director in the case of a Company subject to the Companies (Consolidation) Act, 1908, countersigned by the Secretary, and then handed formally to the Auditors. There is no objection, and indeed it is preferable, for the Secretary to see the Auditors on the proposed Accounts, and take their advice on any points before finally settling them for the Directors. This practice frequently saves considerable trouble during the audit.

Accounts
when passed
to be sub-
mitted to the
Auditors.

It is the duty of the Secretary and the other Officials of a Company to assist the Auditors in every way during the conduct of their audit ; they should also, unless absolutely impossible, arrange for the Auditors to have a room to themselves, as it is exceedingly inconvenient for Auditors and their Staff to have to work where other Clerks are engaged. It is also troublesome for Auditors to be interfered with in the course of the audit. Many Secretaries, in their desire to be attentive, are frequently very troublesome in continually pressing their explanations and offers of assistance on the Auditors, who do their work best when left alone, and when they only come in contact with the Officials in reply to a special request for information or assistance.

Duty of
Officials to
attend upon
the Auditors.

On receiving the Accounts back from the Auditors with their Report, they should be printed and dealt with according to the requirements of the Articles of Association or the Private Act of Parliament, as the case may be. The Report should be printed at the foot of the Balance Sheet, and not at the foot of the Profit and Loss or other Statement, as is frequently the case. In the case of those Companies subject to the Companies (Consolidation) Act, 1908, if the Report is not attached to the Balance Sheet, there must be inserted at the foot of the Balance Sheet a reference to the Report.

Issue of
Accounts and
Auditors'
Report to
Shareholders.

Copies of the printed Accounts, the Report of the Directors, and the Notice convening the Meeting of Shareholders to receive the same, should be sent to the Auditors, so that they may, if they so desire, attend the Meeting.

CHAPTER VI

ON THE BOOKS TO BE EXAMINED BY THE AUDITOR

AUDITORS should be provided with a list of Books—Auditors should understand Book-keeping—Registry or Statistical Books—Financial or Account Books—Books submitted to Auditors of Public Companies, Firms and Individual Traders—Of Trustee Savings Banks—Of Executors and Trustees.

It was prescribed by Section 93 of the First Schedule to the Companies Act, 1862, and consequently by most Articles of Association of Limited Companies, that every Auditor should have a list delivered to him of all books kept by the Company, and it is most desirable this practice be conformed to in all cases. With a list of the books in front of him, an Auditor is far less likely to omit performing some essential part of his audit than when he relies solely on his memory, however that may be fortified by experience.

The Companies (Consolidation) Act, 1908, for some unexplained reason, does not require this list to be delivered to Auditors, but it is undoubtedly within an Auditor's power to require one to be made for him and to report to the Shareholders should it be refused him.

Having once been supplied with the list, and having satisfied himself that it is correct, the Auditor should, at future audits, ascertain whether it has been brought up to date, more especially if any Act of Parliament has been passed since his previous audit prescribing additional books to be kept.

One of the absolutely essential qualifications of an Auditor is a thorough knowledge of the theory and practice of Book-keeping, and in many cases an Auditor is at a great disadvantage if he does not possess some special experience in the book-keeping of other concerns carrying on transactions of a nature similar to the one whose Accounts, as Auditor, he is about to examine. It does not come within the province of this work to give any instruction in the method of keeping ordinary books of account, and the remarks will be confined to those

points which require attention from the point of view of the Auditor.

Some of the books contained in the list handed to the Auditor need not be referred to by him at every audit, but should he at any time not be satisfied with the Accounts and documents placed before him in support thereof, he may deem it necessary to examine some, or even all of them,

for the purpose of his investigation.

The books used by public Companies are as numerous as the ingenuity of Managers, Accountants, and Secretaries have been able to devise, and, as very frequently the official to whom is entrusted the important duty of modelling and opening them has been previously engaged in a different class of business, it often happens that unnecessary columns, accompanied by equally unnecessary detail, are introduced into the books.

An efficient Auditor would be able to remedy this, if necessary, and to suggest more suitable forms for adoption, but it would be impossible in this work to prescribe the forms of books for recording the transactions in detail of every class of Company.

The books in use by public Companies may be divided into two classes—

- | | |
|--------------------------------------|-----------------------------|
| Registry of
Statistical
Books. | 1. Registry or Statistical. |
| | 2. Financial or Account. |

The attention of the Auditor is principally confined to the financial books, and it does not ordinarily come within his province to investigate the statistical ones or books of record, every Company having few or many according to the nature of its business. The following, however, may occasionally require to be inspected or referred to by him, some of which are prescribed by Acts of Parliament, the others by general practice and custom.

The Application for and Allotment of Shares Book should contain the names, addresses, and occupations of all applicants for shares, entered in the order in which their applications are received at the office of the Company, together with

the number of shares they each apply for, the number of shares allotted to them in respect of such application, the dates of application, of receipt of application, and of allotment, the numerical number of the shares allotted, the date of the issue of the Certificates, and any other particulars the Directors or Secretary may consider it desirable to have recorded.

Application
for and
Allotment of
Share Book.

A Register of Members is required to be kept by every Company, having a share capital, registered under or subject to the provisions of the Companies (Consolidation) Act, 1908. This must contain the names, addresses, and occupations of the members, a statement of the shares held by each member, distinguishing each share by its number, the amount paid, or agreed to be considered as paid, on the shares of each member, also the dates on which their names are entered on the Register, and the dates on which they cease to be members of the Company.

Register of
Members.

The Register may be kept in more than one book, which by reference from one to the other supply all the information required by the Act—*Wickersheim's Case*, 8 Ch. 831, 836. If shares be paid in whole or in part, not in money, but in money's worth, the extent of such money's worth is to be entered on the Register—*Anglesea Colliery Company*, 2 Eq. 379, 1 Ch. 555. A Company having a share capital, whose objects comprise the transaction of business in a Colony, may, if so authorized by its Articles, cause to be kept in each Colony where it transacts business a branch Register of Members resident in that Colony.

Frequently the Shareholders' Ledger is so designed as to contain all these particulars, and thus two books are amalgamated in one. This plan has, however, one great disadvantage. Section 30 of the Companies (Consolidation) Act, 1908, prescribes that the Register of Members shall be open to the inspection of any Member gratis, and to that of any other person on the payment of one shilling, or any less sum the Company may prescribe for each inspection.

Frequently
amalgamated
with
Shareholders'
Ledger.

It might be very undesirable for the Company to throw open its Share Ledger to the inspection of every one making a demand under this section, and for this reason the Shareholders' Ledger is usually kept as a separate book. The book which gives all the particulars required by the Act, without affording any information to an inspector except by considerable research, is one which contains the shares in numerical order, with the names of their respective holders, and other particulars, in the same line with the number.

When a Company, limited by shares, issues Share Warrants to Bearer, special instructions are given in Section 37 of the Companies (Consolidation) Act, 1908, as to how the entries relating thereto are to be entered in the Register. (*See Chapter III.*)

By Section 27 of the Act just referred to, no notice of any trust, expressed, implied, or constructive, may be entered in the Register of Members in the case of Companies registered in England or Ireland, but a Company is not entitled to object to enter the name of the Public Trustee on its books.

Companies incorporated by special Act of Parliament are required by the Companies Clauses Consolidation Act, 1845, to keep a book, called a "Register of Shareholders," in which the names, arranged in alphabetical order, of the individuals and corporations holding shares in the Company are entered, together with the number of shares they hold, each share being distinguished by its number and the amount paid on such shares. At each Ordinary Meeting of the Shareholders the common seal of the Company is affixed to this Register for the purpose of authentication.

These Companies, and also all Life Assurance Companies not subject to the Companies (Consolidation) Act, 1908, and which have not incorporated in their Deeds of Settlement Section 10 of the Companies Clauses Consolidation Act, 1845, are obliged to keep a Shareholders' Address Book, in which are entered in alphabetical order the names and addresses of the shareholders.

A Register of Holders of Consolidated Stock has also to be kept by Companies incorporated by special Acts of Parliament, which should contain the names of the proprietors of the stock and the amounts they hold respectively.

Register of
Holders of
Consolidated
Stock.

Every limited Company, and also every Company incorporated by special Act of Parliament, is obliged to keep a Register of Mortgages which specifically affect the property of the Company.

Register of
Mortgages.

This Register should contain a short description of the property mortgaged or charged, each mortgage or charge being separately entered, the amount of the mortgage or charge, and (except in the case of securities to bearer) the names of the mortgagees or persons entitled thereto.

Companies registered under the Mortgage Debenture Acts have to keep a Register of Securities, in which has to be entered the date of every Deed or other Instrument registered at the Land Registry Office, its nature, whether Mortgage, Grant of Annuity, Rentcharge, or other Security, the amount of the Principal money or the amount and duration of the Annuity thereby secured, the tenure, extent, and situation of the property upon which the Security is taken, and, if there are any Charges which take priority of the Company's Security, then the amount of such prior Charges.

Register of
Securities.

Nearly all Companies keep a Register of Transfers (and Companies incorporated by special Act of Parliament are obliged to do so), in which are entered the names and addresses of the transferors and transferees of any shares or stock, also the particulars and amount of the shares, or the amount of the stock transferred.

Register of
Transfers.

Companies incorporated by special Act have also to keep a Register of Debenture Stock, in which are entered the names and addresses of the several persons and corporations holding the Debenture Stock, with the amounts of the stock to which they are respectively entitled.

Register of
Debenture
Stock.

Companies subject to the Companies (Consolidation) Act,

1908, have to keep at their registered office a Register containing the names, addresses, and the occupations of its Directors and Managers¹.

Register of
Directors and
Managers.

A copy of this Register has to be sent to the Registrar of Companies, and any change that takes place therein has to be from time to time notified to him.

The Pursers of Companies, working under the Stannaries Act, have to keep a Cost Book, which term includes all books and papers relating to the business of the mine, which, according to law, or the custom of the Stannaries, ought to be kept by them.

Cost Book.

Under the Trustee Savings Banks Act, 1893, a Book has to be kept containing an extracted list of the Depositors' balances,

Depositors'
Balance
Book.

made up every year to the 20th November, omitting the name, but giving the distinctive number and separate amount of each, and showing the aggregate number and amount of the whole; this book has to be checked and certified by a professional Accountant or by the Auditors.

Section 26 of the Companies (Consolidation) Act, 1908, prescribes that every Company subject to that Act, having a capital divided into shares, shall keep an

Annual List
of Members.

Annual List of Members, together with a Summary. The particulars which have to be entered in this book will be found under that section in Chapter III.

The Minute Book, which every Company is obliged to keep, should contain a record of the Directors

Minute Book.

present at each Board meeting, and of all their transactions thereat.

As the Auditor may frequently have to refer to this book, he should, if it be not properly kept, call the attention of the Directors to the fact, and request them to exercise greater supervision over the entries. All agreements entered into by the Directors should be placed on record in this book, discussions of importance and their result, and, in fact, all that

¹ Additional information is now required by the Companies (Particulars as to Directors) Act, 1917. (See Appendix.)

transpires at meetings of the Board, with the exception of mere conversation. In some Companies where the Directors take part in the actual management of the Company a list of cheques drawn are entered in detail in the Minute Book. In any case a financial statement is usually entered. A Minute Book should be indexed.

In large Companies the Directors divide their routine business among Committees of their body, each of which has its own Minute Book. The above remarks, however, apply, whether the minutes are recorded in one or more books.

Committee
Minute Books.

A Minute Book should also be kept of the transactions of the meetings of the shareholders. The Auditor is entitled to refer to this book for the purpose of ascertaining if any resolutions have been passed affecting the Accounts.

Shareholders'
Minute Book.

The following Financial or Account Books are generally used by public Companies, firms, and individual traders; in non-trading concerns the Day Book and Invoice Book are known by other names.

Financial or
Account Books.

The Cash Book, as its name implies, contains a record of the receipts and payments of the concern. It should, however, except in the case of very small concerns, only contain those payments which are either made by cheques, or bills payable, and bank charges. All payments for which cheques are not drawn should be entered in a subsidiary book, called the "Petty Cash Book," to provide for which payments cheques for round sums should be drawn, and entered in the Cash Book to the debit of petty cash, to be accounted for in the subsidiary book.

Cash Book.

The Cash Book is, therefore, practically a counterpart of the Bankers' Pass Book, and they can be easily checked against each other.

Particulars
of Cash
Receipts and
Payments.

All monetary receipts, coin, bank notes, cheques, bankers' drafts and orders should be entered in the Cash Book, whether on capital or revenue account as and when received, premiums on shares, also the cheques drawn by the concern on its

bankers; bank charges, and bank interest. When Bills of Exchange Receivable are discounted the proceeds are entered in the receipt side of the Cash Book, while on the other side should be entered the amount charged by the bankers for the accommodation.

The Petty Cash Book contains, as already mentioned, a record of those payments for which it would be inconvenient, or the amounts of which would be considered too small, to draw for each a separate cheque.

Instead of posting each of the items in the Petty Cash Book to the debit of their Ledger Accounts, an abstract may be made weekly, monthly, or quarterly, journalized, and then posted into the Ledger.

The Day Book contains the records of all goods sold and delivered by a trading concern; these need not be entered in detail, but the amount charged should be placed in a cash column.

The totals of the cash columns are carried in the usual way through the Journal to the credit of a general sales or a departmental account, while each sale is usually posted direct into the Ledger to the debit of the purchaser of the goods.

When a business is divided into several departments, each department has usually its own Day Book.

In non-trading concerns books of record of the business transacted are kept on very much the same principle as the Day Book of a trading concern, their object being to ensure that the Accounts of the customers in the Ledger are debited with the proper amounts, also that these amounts are carried, either in detail or in total, periodically to the credit of an impersonal account in the Ledger, from which they will be ultimately transferred to the credit of the Revenue or Profit and Loss Account.

In the Invoice or Bought Book are entered, with full particulars, the purchases by a trading concern of all goods intended to be sold again.

The invoices themselves should be numbered and filed in numerical order in Guard Books. For the purpose

of facilitating reference, the numbers should coincide with those in the Invoice Book.

There are many minor books kept by trading and other concerns, according to the class of business carried on, which may require examination by the Auditor, such as—

Order Books. Order Books, which contain copies of the orders as received from customers, and should be produced to the Auditor should he not feel satisfied that sales taken credit for are genuine, or have been brought into the Accounts when they belong to those which will be presented to the shareholders on a future occasion. If, after inspection, the Auditor is still in doubt he should require production of the original orders.

Contract and Estimate Books.

Delivery Books.

Press Copy Books, containing copies of the original Invoices of Goods sent out, copies of Statements, etc.

Stock Books.

Stores Books.

Returns Outwards. This book contains Purchases which have subsequently been returned.

Returns Inwards. This book contains goods returned by customers of the house.

Wages Books.

Bills are written undertakings to pay certain sums on certain dates, and can be drawn in two forms, as Acceptances or as Promissory Notes, the former being more generally used in commercial transactions.

Bills of Exchange. The Bills Receivable Book contains the particulars of those Bills the proceeds of which, on maturity, are paid to the concern, while the particulars of those Bills which have to be paid by the concern on their due date are entered in the Bills Payable Book.

Bills Receivable and Payable Books. When a customer gives a bill receivable to his creditors in lieu of cash, his Ledger Account is at once credited with the amount of the bill, while the Bills Receivable

Account in the Ledger is debited with a like amount. In the same way, when the concern discharges one of its obligations by giving a bill payable, the firm receiving the bill is debited with the amount, and the Bills Payable Account in the Ledger is at the same time credited.

The Journal is the book which constitutes the system of book-keeping by double entry. Into it are collected, either in detail or in abstract form, the transactions of the concern previously entered in the books already described, or in those corresponding to them.

The Journal has two cash columns, usually on the same page, with an additional column for the Ledger folios. In the left, or debit cash column, are entered the amounts which have to be posted to the debit of Accounts in the Ledger, while in the right-hand cash column are entered those amounts which have to be posted to the credit of Ledger Accounts.

As a check on the correctness of the figures, the columns should be added up on the completion of the entries for the time being, and if the totals of the two columns agree the items can be posted into the Ledger.

The first entries in the Journal of a Company formed for acquiring a property, or taking over a business, would be those referring to the purchase, such entries being made for the purpose of bringing into the Accounts any property or other asset, the particulars of which would be contained in the deed or other document by which such property was acquired, also the mortgages or charges, if any, with which the property is encumbered.

All sales, purchases, interest, discount, commission, expenses, etc., should be journalized, also the bills payable and receivable. In fact, to carry out fully the system of book-keeping by double entry, every item in the subsidiary books should be journalized, and posted from the Journal into the Ledger. It is, however, usual to post the Day Book and Invoice Book entries direct to the debit or credit of the personal Accounts in the Ledger, also the cash receipts and payments. In some

concerns the cash is partly journalized as regards certain entries, the remainder being posted direct.

The Ledger contains the classification of all the entries in the other financial books, and no other entries, with the exception of transfers from one Ledger Account to another, should be made in it, as, in strict accordance with the theory of double entry as practised in this country, all items found in the Ledger should have passed through the Journal, and been posted into the Ledger therefrom.

Ledger.

It should, however, be stated here that the above remarks apply to those books which are kept upon the strict principles of double entry book-keeping, but the pressure of business and the desire of reducing labour has in many large establishments caused the entries in the Journal to be as few in number as possible.

Still, the principle remains, and to an Auditor it is a matter of but little importance whether the amounts are posted direct to the debit or credit of the Ledger Accounts from the subsidiary books direct, or through the instrumentality of the Journal. As long, however, as this book is the accepted medium of posting, the foregoing remarks will apply.

The preceding remarks explain the system of book-keeping in general use by public Companies, firms, and individual traders. With reference to the subsidiary books, it would, as stated at the commencement of the chapter, be impossible to prescribe the forms for every class of trading concern.

The books necessarily vary according to the nature of the business, but the object for which they are employed is always the same, namely, to record the transactions in as simple a manner as is consistent with ensuring perfect accuracy, combined with rapidity in the transfer.

The Inspection Committee of Trustee Savings Banks recommend that Duplicate Cash Counter books or Tellers' books be kept, also General Cash books, a General Ledger, and Journal and Depositors' Ledgers, and that the General Ledger should contain the following accounts :

**Books
of Trustee
Savings Banks.**

1. Commissioners for the Reduction of the National Debt.—General account.

2. Commissioners for the Reduction of the National Debt.—Separate surplus fund not bearing interest.

3. Commissioners for the Reduction of the National Debt.—Separate surplus fund bearing interest.

4. Depositors.

5. Treasurer.

6. Cash.

7. Petty Cash.

8. Interest.

9. Expenses of management.

10. Profit and loss.

11. Premises,

and

12. Such other accounts as the circumstances of each Bank may require.

The Duplicate Cash Counter books previously referred to might be used as follows—

Cash Counter book A, kept by the Trustee or Manager in attendance (if his attendance is required by Sub-section (2) of Section 6 of the Act of 1863), to be used for posting items of receipts and payments to the Deposit Ledgers. It should show a constant weekly summation, and the weekly totals should be certified by the signature of the Trustee or Manager.

The Cash Counter book B might be made in similar form, and would give the figures for the weekly returns of cash transactions sent to the National Debt Office. The Cash Book and General Ledger should also be posted from this source.

Books of The Books of Account of Executors or Trus-
Executors and tees under a will usually submitted to an
Trustees. Auditor are the following—

Cash Book, which would commence with the balances at the Bank or Banks with which the Testator banked at the date of his death. The cash found in the house, and all other receipts by the Executors or Trustees, including the debts due to the Testator at the date of his death, and collected by the Executors or Trustees,

dividends on investments, proceeds of investments, sold and any other receipts would be entered, while the payments would include the funeral expenses, death duties, probate and other law expenses, legacies, debts due by the Testator at the date of his death and discharged by his Executors or Trustees, purchase of investments, and all other payments.

The General Ledger would contain the amounts posted from the Cash Book, with headings similar to those indicated in the Cash Book.

Ledger.

The Investment Ledger would contain the accounts of the various Investments belonging to the Testator at the date of his death, and of those purchased since by the Executors or Trustees, also an Account of all dividends received thereon.

Should the Testator have left property in land or houses, the books usually kept for this class of property should also be kept by the Trustees. The same remark applies should the Testator have left an interest in any businesses or ventures, and these books should be placed before the Auditor, who would examine them in the ordinary way, as though the property or businesses belonged to a living person.

Executors and Trustees are bound to keep Accounts, and to give a satisfactory statement of the state of a Testator's Assets.—*Ottley v. Gilby*, 8 Beav. 692.

In a case where proceedings for administration are rendered necessary by the gross and indefensible neglect of Trustees to deliver Accounts, the defaulting Trustees may be ordered to pay all the costs, including the costs of taking and vouching the Accounts. Such an order may be made in proceedings commenced by originating summons.—*In re Skinner; Cooper v. Skinner* [1904], 1 Ch. 289.

CHAPTER VII

FORMS OF ACCOUNTS SUBMITTED TO AUDITORS

VARIETY in Forms of Accounts published by Public Companies—Forms of Accounts published by Limited Liability Companies—By Assurance Companies—By Railway Companies—By Gas and Water Companies—Profit and Loss (or Revenue) Account and Balance Sheet usually issued alone when Forms of Account not prescribed—Difference between Revenue Account and Cash Account—Balance Sheet—Forms of Accounts of Building Societies—Of Friendly Societies—Of Industrial and Provident Societies—Partnership Accounts—Forms required by King Edward's and other Hospital Funds—Accounts of Executors and Trustees under a Will.

THE Accounts of Public Companies and Societies, as placed before their Auditors for confirmation, vary very considerably. In the case of certain classes of Companies and Societies the forms are specially prescribed, and are set forth in Schedules to the Acts of Parliament under which they work, while other Companies and Societies are unfettered in this respect, and it is left entirely to the Directors or Committees, as the case may be, and their officers, as to how the results of their management are laid before the shareholders.

Variety in
Forms of
Accounts
published by
Companies,
etc.

Assurance, Railway (including Tramway), Gas Companies, and Building Societies are examples of the first class, while nearly all Companies registered under the Companies Act, 1862, or the Companies (Consolidation) Act, 1908, are at liberty to use their own forms of Accounts. The Companies (Consolidation) Act, 1908, implies that a Balance Sheet shall be laid before each Company at its Annual General Meeting, but does not prescribe any form, nor does it require the Directors to lay before the shareholders a Profit and Loss Account. The first Schedule to the Act (Table A), however, requires the Directors of every Company registered without Articles of Association to lay before the Company in general meeting a Profit and Loss Account.

This Act also prescribes that, at least seven days before the Statutory Meeting of a newly registered Company, the

Directors shall forward to every member a Report containing the number of shares allotted, with certain particulars relating thereto. The Report must also contain an Abstract of the Receipts and Payments of the Company to the date of the Report, on account of its Capital, whether from shares or debentures, and an account or estimate of the preliminary expenses, duly certified by the Auditors, if any have been appointed.

Companies registered under the Acts of 1862 and 1908, with Articles of Association, are required to present to their Auditors the forms of Account specially prescribed in those Articles. If registered without Articles of Association the Directors are required by Section 106 of Table A to lay before the

Forms of
Accounts of
Limited
Companies.

*Company in general meeting a Profit and Loss Account for the period since the preceding Account, or (in the case of the first Account) since the incorporation of the Company, made up to a date not more than six months before such meeting.

The Directors have also to lay before the meeting a Balance Sheet made up to a date not more than six months before such meeting, but no form of Profit and Loss Account or Balance Sheet is prescribed.

The Accounts of all Assurance Companies, registered under the Act of 1862, as many are, are subject to the forms prescribed by the Assurance Companies Act, 1909, which have to be filed annually with the Board of Trade. These forms will be found in the Appendix.

Forms
prescribed by
Assurance
Companies
Act, 1909.

This Act for the first time placed on the same footing, as regards the forms of Accounts, Assurance Companies transacting the businesses of Fire Insurance, Accident Insurance, Employers' Liability Insurance, and also that of Bond Investment. The Act contains special provisions for each class of Insurance business, and the sections relating to the Accounts and audit thereof must be carefully perused by Auditors of Insurance Companies before completing their audit. These sections will be found in Chapter III.

The Companies Clauses Consolidation Act, 1845, requires by Section 106 that the Directors of every Joint Stock

Company incorporated after the 8th of May, 1845, by Special Act of Parliament, shall deliver to the Auditors half-yearly or other periodical Accounts and Balance Sheet, and By Companies Clauses Consolidation Acts. Section 116 prescribes certain details which have to be entered in the Balance Sheet.

Railway Companies are required, by the Railway Companies (Accounts and Returns) Act, 1911, to publish, in addition to the Revenue Account and Balance Sheet prescribed by that Act, five Statements relating to their capital, showing with details the capital authorized and created by the Company, the proportion received, the capital raised by loans and debenture stock, and the receipts and payments on Capital Account. By the same Act they are also required to publish two Statements relating to the estimated further expenditure on Capital Account, and a number of other Statements which will be found in the Appendix.

By Gas Works Clauses Act, 1847. Gas Companies are required by the Gas Works Clauses Act, 1847, to publish detailed Statements of their share and loan capital.

Electric Lighting undertakings are required by the Electric Lighting Act, 1882, to publish Accounts in the form prescribed from time to time by the Board of Trade. At the present time the form includes Statements of Share and Loan Capital, a Capital Account, a Revenue Account, a Net Revenue Account, a Reserve Fund Account, a Depreciation Fund Account, and a General Balance Sheet.

The Accounts just referred to and all other similar statements are statistical, and do not form part of the book-keeping proper.

The Accounts of those Companies which are at liberty to present them in their own forms are usually set forth in two statements, a Revenue or Profit and Loss Account, and a Statement, in an abstract form, of the debtor and creditor balances of the Ledgers remaining after certain balances have been taken to the Revenue or Profit and Loss Account, known as a Balance Sheet.

Revenue Account and Balance Sheet usually issued alone when Form not prescribed.

The entries in the financial books kept on the system of book-keeping, known as "double entry," culminate in these two statements, and it is to the investigation of their correctness or otherwise the attention of the Auditor is principally confined. All other statements which may be brought under his notice are, with the exception of estimates, abstracts from the Cash Book, compiled for the purpose of showing how a particular class of receipt has been expended.

With one exception they require no comment, both the preparation of these statements and the checking their correctness being a mere mechanical process.

The exception just referred to is a general statement of Receipts and Payments, which is frequently published by Companies in addition to a Revenue or Profit and Loss Account and Balance Sheet, and in some instances it is substituted for a Revenue Account and issued to the Shareholders, in conjunction with a Balance Sheet, alone.

Statement of
Receipts and
Payments, or
Cash Account.

This Cash Account shows the shareholders how their capital and other receipts of the Company have been expended or invested, and if the debtors of the Company discharged their obligations by prompt payment, on the completion of each transaction, and if the Company, on the other hand, settled with their creditors in the same manner, this Account, with the inclusion of the values of the stock-in-trade at the commencement and end of the period, together with a Balance Sheet, would be the only statement required for laying before the shareholders the result of the business of the period.

Public Companies, almost without exception, take advantage of credit, and, on the other hand, in transacting business with their customers, afford them the same facilities. A Cash Account consequently does not convey to the shareholders all the information requisite to show the financial result of the transactions of the Company.

The difference, therefore, between a Cash Account and Revenue Account is that the former is merely a summary of the cash received and paid out during the period as entered in detail in the Cash Book, while the latter shows on the one

side the total income of the period, irrespective of whether the same has been actually received during the period or was due to the concern at the end of the period, and on the other side the total outgoings or charge, whether the same has been paid by the concern during the period or was owing by the concern at the end of the period.

Difference
between
Revenue
Account and
Cash Account.

All receipts and payments relating to capital, and not to income, would be omitted in the Revenue Account, but would have to be included in the Cash Account ; for example : The following items appearing in the Cash Account would be omitted in the Revenue Account for the same period. On the income side, the capital introduced by partners or shareholders, premiums on shares issued, amounts received on mortgage, on debentures, and on other loans, or on the sale of securities ; and on the expenditure side, sums paid for the purchase of investments, sums advanced on mortgage, the amount of mortgages repaid by the concern, sums advanced on loans, and the amount of loans repaid by the concern.

On the other hand, the following items would appear in a Revenue or Profit and Loss Account which would be absent in a Cash Account. On the income side, the amounts due from debtors for sales not paid for at the date of closing the books, interest on investments accrued, but not received ; while on the expenditure side would be found purchases by the Company not paid for, and other similar entries.

In the case of a Company the Receipts and Payments Account, if published, should show not only the receipts and

Receipts and
Payments
Account
should show
total Receipts
and Payments
to date.

payments of the period under audit, but also the total amount of cash received, and the total amount expended from the commencement of the Company's existence.

If only the receipts and payments of the period under audit are given, the manner in which the shareholders' capital has been expended will only be shown in the first statement prepared after the incorporation of the Company, unless there have been subsequent issues of capital. In such cases the manner in which the capital

has been expended will be shown in the statement embracing the period during which the respective issues have been made or in later statements should any Capital not have been expended during the period in which it was received.

The danger of relying on a Cash Account only, for the purpose of ascertaining the amount of profit available for dividend, has been pointed out in Chapter V, and the Statements of Account issued to shareholders of Companies registered under the Act of 1862, or the Act of 1908, very seldom include a Cash Account.

The other statement, issued to the shareholders in conjunction with the Revenue or Profit and Loss Account, is the one usually known as a Balance Sheet. This document shows on the one side the capital of the Company, both share and loan, the amount due to creditors, and any other liabilities of the Company, arranged under the proper headings, while on the other side are enumerated the assets and property and other debit balances of the Ledger. A similar statement is usually prepared for the partners of a firm or for an individual trader.

The "Receipts and Payments Account," or "Cash Account," the "Revenue Account," or "Profit and Loss Account," and the "Balance Sheet" can therefore afford the shareholders of a Company full information respecting the affairs of their undertaking. From the first statement they can ascertain how their capital and cash receipts from all sources have been expended. The second gives the result of the operations for the period over which it extends, while the third shows the financial position at the close of the period as a result of the transactions recorded in the books.

The first of these statements has been already explained as being an abstract of the Cash Book, and requires no further comment. The Revenue or Profit and Loss Account and the Balance Sheet will be treated more fully in the following chapters.

The Building Societies Act, 1874, requires by Section 40 that an Annual Account of Income and Expenditure and a

General Statement is to be annually attested by the Auditors of each Society, and Section 2 of the Building Societies Act, 1894, prescribes that these Accounts shall be in such form and shall contain such particulars as the Chief Registrar of Friendly Societies may prescribe. The prescribed form will be found in the Appendix.

Under the Friendly Societies Act, 1896, a Return of the receipts and expenditure, funds and effects of each Society or Branch has by Section 26 and 27 to be submitted to the Auditors once at least in every year, and the form which is prescribed by the Chief Registrar of Friendly Societies is given in the Appendix.

The Industrial and Provident Societies Act, 1893, contains in Sections 13 and 14 provisions for an Annual Return of the receipts and expenditure, funds and effects of each Society, to be submitted to its Auditors, but no form is prescribed, and the only details specially required by the Act are that the expenditure in respect of the several objects of the Society shall be shown separately.

The Accounts of Firms or Partnership Accounts are seldom submitted to Auditors in a set of prepared statements, the usual practice being for the Auditors to perform the details of the audit, and then to draw up the statements and submit them to the partners for their approval. When agreed to by the partners the statements are usually entered in a "Private Ledger," and the Balance Sheet is then signed by all the partners.

The following Statements are usually prepared—

- A Capital Account of each partner.
- A Drawing Account of each partner.
- A Profit and Loss Account.
- A Balance Sheet.

When an Auditor acts solely on behalf of a sleeping or dormant partner, the statements are, as a rule, prepared for him to check, in which case he should require copies of the last two statements to be handed to him, to forward to

his client with his report. Should his client be in the habit of drawing periodically from the firm, instead of receiving his share of the profits at fixed periods, the Auditor should also be supplied with copies of his client's drawing and capital Accounts to enclose with his report.

The Committees of King Edward's Hospital Fund for London, the Metropolitan Hospital Sunday Fund, and the Hospital Saturday Fund require all Institutions who desire to participate in the Collections to submit a Statement of Income and Expenditure, signed by a professional Auditor.

The income is to be divided under the following heads—

A. ORDINARY (showing separate total at end)—

- I. Annual Subscriptions (to be accompanied with list).
- II. Donations (list).
Boxes (list).
- III. King Edward's Hospital Fund for London.
- IV. Hospital Sunday Fund.
- V. Hospital Saturday Fund.
- VI. Congregational Collections (apart from Hospital Sunday Fund).
- VII. Workmen's Collections (apart from Hospital Saturday Fund).
- VIII. Entertainments.
- IX. Invested Property.
Dividends.
Rents.
Income tax returned.
Interest on Deposit or Current Account.
- X. Nursing Institution.
Private Nurses.
Nurses' and Probationers' Fees.
- XI. Patients' Payments.

In-Patients	{	Required to be divided for the Saturday Fund into Optional and Obligatory.
Out-Patients		

XII. Other Receipts (with details).

The total should be added up, and below the total Ordinary Income should be placed—

B. EXTRAORDINARY—

I. Legacies (with details).

II. Festivals, Bazaars, etc.

For New Buildings or Equipment, or for the
Extinction of Debt incurred for such
purposes.

For Endowment or other capital purposes.

The Expenditure is to be divided under the following
Expenditure. heads.

A. MAINTENANCE (showing separate total at end)—

I. Provisions.

- (1) Meat.
- (2) Fish, Poultry, etc.
- (3) Butter, Bacon, etc.
- (4) Eggs.
- (5) Milk.
- (6) Bread, Flour, etc.
- (7) Grocery.
- (8) Vegetables and Fruit.
- (9) Malt Liquors.
- (10) Aërated Waters and Ice.

II. Surgery and Dispensary.

- (1) Drugs, Chemicals, Disinfectants, etc.
- (2) Dressings, Bandages, etc.
- (3) Instruments and Appliances.
- (4) Wines and Spirits.
- (5) Sundries.

III. Domestic.

- (1) Renewal and Repair of Furniture.
- (2) Renewal and Repair of Bedding and Linen.
- (3) Renewal and Repair of Hardware, Crockery,
Brushes, etc.
- (4) Washing done off Hospital premises (aver-
age weekly number of articles).

- (5) Cleaning and Chandlery.
- (6) Water.
- (7) Fuel and Lighting: (a) Coal. (b) Gas.
(c) Electric Current. (d) Oil, Wood, etc.
- (8) Uniforms (Nurses, Porters, etc.).
- (9) Sundries.

IV. Establishment.

- (1) Insurance.
- (2) Renewals and Repairs.
- (3) Annual Cleaning.
- (4) Garden.

V. Salaries, Wages, etc.

- (1) Medical.
- (2) Dispensing.
- (3) Nursing.
- (4) Other Officers.
- (5) Mechanics, etc.
- (6) Porters.
- (7) Domestic Servants.
- (8) Scrubbers.
- (9) Pensions.

VI. Miscellaneous.

- (1) Printing and Stationery.
- (2) Postages.
- (3) Advertisements.
- (4) Sundries.

B. ADMINISTRATION (showing separate total at end)—

I. Management.

- (1) Official Salaries.
- (2) Pensions.
- (3) Official Printing and Stationery.
- (4) Official Postage and Telegrams.
- (5) Official Advertisements.
- (6) Law Charges.
- (7) Auditor's Fee.
- (8) Sundries.

II. Finance.

(1) Appeals.

(2) Commission.

(3) Festivals, Bazaars, etc.

Total Cost of Maintenance and Administration.

C. RENT, RATES AND TAXES—

I. Rent.

II. Rates and Taxes.

The total should be added up, and below the total Ordinary Expenditure should be placed—

D. EXTRAORDINARY EXPENDITURE—

I. Interest.

II. Contributions to other Institutions.

III. Festivals, Bazaars, etc.

(a) For New Buildings or Equipment, or for the Extinction of Debt incurred for such purposes.

(b) For Endowment or other capital purposes.

The Balance, being excess of total income over total expenditure, or excess of total expenditure over total income, should be shown on the proper side.

The Balance Sheet has to be divided under the following heads—

Balance Sheet
for Hospitals.

On the Debtor or Liabilities side.

£ s. d. £ s. d.

I. TO SUNDRY CREDITORS.

(To include all Tradesmen's unpaid accounts and accrued liabilities.)

II. TO LOANS TO HOSPITAL.

(To be detailed.)

III. CAPITAL ACCOUNTS.

(A) For Special Purposes . . .

(a) Hospital Endowments . . .

(b) Other Special Purposes . . .

(B) For Buildings and Equipment . . .

(c) For General Purposes . . .

£ s. d. £ s. d.

IV. TO UNEXPECTED INCOME BALANCES OF
SPECIAL FUNDS.

(To be detailed.)

V. ¹ INCOME AND EXPENDITURE ACCOUNT.

Balance at 1st January, 19 . . .

Add—

Excess for Year to 31st December,
19

And on the Creditor or Assets side.

I. BY CASH AT BANK AND IN HAND.

(A) Generally on account of the
Hospital

(B) On account of Special Funds
(separating Uninvested Capital
Balances)

II. „ SUNDRY DEBTORS.

III. „ INVESTMENTS ON CAPITAL ACCOUNTS.

(A) For Special Purposes

(a) Hospital Endowments

(b) Other Special Purposes

£ s. d. £ s. d.

(B) For Buildings and Equipment

(C) For General Purposes

IV. BY LAND, BUILDINGS AND EQUIPMENT
OF THE HOSPITAL.

(Stated separately where practicable.)

Expenditure from 19 ,

to , 19

Expenditure during the year ending

, 19

¹ This Account will be stated as No. 5 on the other side should it show a deficit.

The foregoing forms are here inserted, by permission, from pages 16, 17, and 18 of the *Revised Uniform System of Hospital Accounts*, as adopted by King Edward's Hospital Fund for London, the Metropolitan Hospital Sunday Fund, and the Hospital Saturday Fund (Third Edition, August, 1914), published by George Barber, 23 Furnival Street, Holborn, London, E.C.4. Full explanations will be found in the above-mentioned publication.

The Accounts of Executors or Trustees under a Will usually submitted to Auditors are the following—

Accounts of
Executors.

(1) Statement showing the financial position of the Testator at the day of his death, from which will be ascertained the amount of the Estate or Corpus to be administered by the Executors or Trustees. In preparing this Statement regard must be had to the provisions of the Apportionment Act, 1870 (*see* Chap. IV).

(2) Statement showing the receipts and payments of the Executors or Trustees from the date of the death until the date of this Statement so far as regards the Corpus.

(3) The like as regards Income.

(4) Statement showing the financial position of the Estate at the date up to which the Accounts have to be audited.

In those cases where there are separate Trusts, separate Receipts and Payments Accounts and a Statement showing the financial position of each Trust, are usually laid before the Auditors.

When the estate includes landed property, or a business, Revenue Accounts or Profit and Loss Accounts are also prepared either by the Auditors or submitted to them for audit.

CHAPTER VIII

NATURE AND PRINCIPLES OF AN AUDIT

NATURE of an effective Audit—Errors of Omission—Errors of Commission—Errors of Principle—A List of the Books of Assistance to the Auditor—Auditor should be provided with the Regulations—No part of an Auditor's duty to give advice—Investigation of the Capital Account of a Company—Prospectus—Application for Shares—Letters of Allotment—Share Certificates—Entries in the Books of the particulars of the Purchase—Reconstructed Companies—Examination of the Cash Book—Of the Vouchers—Comparison of Cash Book with Bankers' Pass Book—Documents should be arranged for the inspection of the Auditor—Reconciliation of the Balances of the Cash Book and Bankers' Pass Book—Examination of the Subsidiary Books—Card and "Loose Leaf" Systems—General Duties—Continuous Audit, its advantages and disadvantages—Audit of Accounts of Executors and Trustees—Audit of Partnership Accounts.

WHEN the Accounts of a public or private Company, Institution, Firm, Charity, Trustee, or Individual are ready for the

<p>Intimation should be sent to the Auditor when Accounts are ready.</p>	<p>periodical audit, it is usual to communicate with the Auditor to that effect, who thereupon fixes a time when he will attend for the purpose of commencing his investigation, as an Auditor <i>quâ</i> Auditor has nothing to do with the preparation of the Accounts to which he affixes his certificate as Auditor.</p>
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In the case, however, of the audit of the accounts of firms, individuals, and of Executors or Trustees, it is a common practice for the Auditor to prepare from the books the Accounts ultimately signed by him, but in this case he acts more as a professional Accountant than as an Auditor.

Before giving a detailed description of the duties it is usually incumbent upon an Auditor to fulfil, it is desirable to state

<p>Nature of an Audit.</p>	<p>shortly the nature of an audit, in order to correct two widely different ideas which prevail, one, that this is represented by checking the Ledger balances into the Balance Sheet, the additions in the Cash Book, the postings therefrom and the other books into the Ledger, and comparing the payments made with the vouchers produced ; and the other, that an Auditor has to go through</p>
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every item entered in the Books of Account for a fee which represents an infinitesimal portion of the salaries paid to those who makes these entries.

When auditing was in its infancy, that is, when the audits of public Companies were performed exclusively by those who were elected to the office solely because they happened to be shareholders or partners in the concern, the checking of the payments as shown in the Cash Book with the vouchers, agreeing the cash balance with that shown in the Bankers' Pass Book, checking the Ledger balances into the Trial Balance, and therefrom into the Accounts presented to the shareholders, was practically looked upon as the sole duty of an Auditor, in other words, the audit was merely mechanical.

Much more is expected, however, from the professional Auditor, and, in the legal decisions which have been given in connection with their duties, it is quite clear that not only do the general body of shareholders expect more than they did from the Auditor, but their expectations have been indorsed by the Judges, including those of the Court of Appeal. At the same time it has been held judicially that it is absolutely impossible for an Auditor to check all the items of the books, and, in fact, it would be impossible for him to do his duty were he not able to rely with some degree of confidence upon what are known as "Internal Checks," that is, checks performed in the offices of large Companies by a Committee of the Directors, or by a single Director, or by one set of clerks having no connection in their ordinary daily work with the other departments over which they exercise their supervision.

For example, it is the custom in many large concerns for the clerks who receive money, either in cheques or cash, to enter the amounts received in a rough Cash Book, and they have no further control over or further connection with the carrying forward of the entries relating thereto. The taking of these cheques and paying them into the bank is performed by another official, whose entries are subsequently checked by

Impossible
for Auditors
to check.
every entry.

Internal
Checks.

a third official against the rough or counter Cash Book of the clerk who receives the money.

This is merely one example of what is known as an "Internal Check," but there are well-known general instructions, usually recommended by professional Auditors, which should be carried out in the offices of every Company, and in the offices of every mercantile firm, except those whose transactions are on such a small scale that they can be supervised by the principals.

In checking the entries in one Book of Account to the corresponding entries in other books it is very desirable for the Auditor and his clerks to have distinctive marks, or "ticks," as they are technically called. These "ticks" are referred to more specially in the next chapter. In some special examinations different coloured inks may be usefully employed.

When a good system of book-keeping is not in force in the offices of a public Company or of any concern being audited, recommendations may be made by the Auditor, although it does not fall within his province to make these recommendations, and in no cases has he power to enforce them. Such recommendations should in the case of a Company be made in writing to the Directors, who, as a rule, are pleased to receive them, and the neglect of suggestions by experienced Auditors as to alterations in a system of book-keeping might lead to the Directors being at some future date judicially held to have been guilty of neglect of their duty.

If the following special precautions are not in force, the Auditor should recommend that all cash received should be paid into the bank, and no deductions from the receipts should be allowed for petty cash, for which cheques for round sums should be drawn or cheques should be drawn periodically for the amount actually expended between certain dates to replace the balance in hand at the commencement of the period. All payments above a certain amount, varying according to the magnitude of the transactions of the business, should be made by cheque. By this means the Cash Book can be checked in detail with the Bankers' Pass Book.

Counterfoil Receipt Books should be used for giving receipts, in place of allowing the Cashier or any other official to give receipts on the invoices themselves.

The Cashier should be instructed to obtain vouchers for payments of every kind made by him, including petty cash payments.

In all manufacturing and trading concerns Stock Accounts should be kept, and, if possible, in sterling, as well as in weight or quantity.

When these Accounts are kept in sterling they can be introduced into the system of book-keeping, but the weights and quantities should be also entered, for the purpose of their being checked at the time of the periodical stock-taking.

An audit, to be effectual, that is, to enable the Auditor to certify as to the accuracy of the Accounts presented, may for practical purposes be divided into three parts, namely, to guard against (1) Errors of Omission; (2) Errors of Commission; and (3) Errors of Principle.

With regard to "Errors of Omission," each item which appears either on the debit side of the Balance Sheet or the

<p>Errors of Omission.</p>	<p>Cash Book should be checked as far as possible by an original document obtained from an independent source, in order to ascertain that the concern being audited has been charged with all cash received or liability incurred.</p>
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For example: In the case of the first audit of a Company's Accounts it is necessary to check the applications for shares and letters of allotment against the amounts shown in the Cash Book as having been received on capital account, and to ascertain finally that they appear among the liabilities to shareholders in the Balance Sheet.

In regard to the liabilities in respect of purchases, the postings to the Ledger should be checked through the subsidiary books, so as to ascertain that the balances representing the Accounts unpaid at the date on which the books are closed are all brought to the debit side of the Balance Sheet.

In the case of a Railway Company, when surplus lands have been sold, the Auditor should ascertain that the actual

purchase money has been debited in the Cash Book. This could be proved from various independent sources, such as the Solicitor's bill of costs, showing the entries relating to the conveyances, or the conveyances themselves, or copies thereof could be produced.

If any of the investments of a Company have been sold, the Auditor is able to ascertain from the broker's notes that the full amount which they had realized had been properly entered in the Cash Book.

For the purpose of satisfying the Auditor that the Dividends stated to have been received on investments are correct, the notices which are invariably received from Railway and other Companies affixed to the Dividend warrants, and technically known as "top halves," should be produced to him.

The examination of Departmental Cash Books, Counter Cash Books, Counterfoils of Receipt Books, and Collectors' Books frequently enables an Auditor to detect the omission of cash receipts, which he would never ascertain were he to rely solely on the entries in the principal Books of Account.

"Errors of Commission" may be either accidental or intentional; in the former case it is a comparatively simple task to detect any errors of this nature that may exist. It is a mere mechanical process to check the items of one book with the corresponding items of another, until they are brought into the Ledger, and from thence finally carried into the Revenue or Profit and Loss Account and Balance Sheet, or to compare the amounts taken credit for as payments with the vouchers produced.

Errors of
Commission.

Entries in books of Account made with intent to deceive or defraud are not so readily detected, and the work may be so skilfully done as not to excite any suspicion in the mind of the Auditor. As a rule, however, an Auditor of experience knows intuitively when a deliberate attempt is made to deceive him, and he should in such circumstances go beyond the ordinary tests applied by him in his audit in his endeavours to ascertain the correctness or otherwise of the Accounts. In this he must, necessarily, be guided by his experience, and not by ordinary rules.

When the Auditor is a Professional Accountant, the details of the audit, such as checking the items from one book into another, examining the vouchers, etc., are usually entrusted to clerks working under his superintendence, the Auditor reserving for himself the duty of satisfying himself that his managing clerk or other representative has performed his work in an efficient manner and ascertaining himself if any "Errors of Principle" have been committed.

Dealing with "Errors of Principle" forms the greater proportion of the professional work of a Chartered Accountant, since, as a rule, more errors are discovered by him at the conclusion of an audit, after he and his clerks have dealt with the detail work, than in the checking of the details.

Fortunately for the community at large, the majority of persons in charge of property, and of the book-keeping relating thereto, are honest, and it is seldom, therefore, that the Auditor discovers that cashiers have appropriated cash and manipulated their books in order to conceal their defalcations, but in the majority of cases in which Accounts are submitted to Auditors "Errors of Principle" come under their notice.

There are many reasons why these errors arise; in the first place, even skilled accountants and book-keepers are not always acquainted with the law under which their employers carry on their operations. Whether they be Public Companies registered under Acts of Parliament, Partners working under the Partnership Acts, Executors and Trustees acting under the Will of a Testator, or Administrators of the property of an Intestate, the Accounts prepared on their behalf, and presented to Auditors, are, although perhaps correct from an accountancy point of view, frequently not presented in the form prescribed by an Act of Parliament, or by a Deed, or an Agreement, and, moreover, they may contain entries of payments which are *ultra vires*.

A professional Auditor has to deal frequently with these improper payments, with incorrectly stated forms of Accounts,

and also with a variety of other matters quite outside the question of mere accountancy accuracy.

For example : The Auditor of a Company should ascertain that the authorized capital, both share and loan, has not been exceeded. That expenditure which ought properly to be charged against the Revenue Account has not been capitalized. That the funds of the Company have not been invested in prohibited securities, and generally that the Statements presented to the shareholders not only agree with the books of the Company, but that the transactions, the financial results of which are recorded in these Accounts, have been in conformity with the public law and the private statutes of the Company. Where the forms of account to be presented to the shareholders are prescribed by law the Auditor should endeavour to induce the Directors to present the Statements prepared in the statutory form, so as to make it unnecessary to refer in his Report to the fact of their not being presented in the prescribed form.

The Auditor, before entering upon the duties of his first audit of a client's Accounts, whether of a public Company or of a private client, will find it very useful to prepare a programme or general scheme of the audit. In order to draft this programme he must make himself acquainted with the general nature of the business carried on by the concern whose accounts he has to audit. Having ascertained this, he can design the scheme to be followed by himself and his staff. As the audit progresses he will, as a rule, find it necessary to add to his programme and possibly revise his first draft. At the completion of the audit the "Programme" should be filed and studied before the commencement of the following audit, and an endeavour should be made at each audit to make this "Programme" more efficient.

In the case of a newly incorporated limited Company the following entries should be made in the "Programme" of audit—

- | | |
|---|--|
| First entries in
Programme
of Audit of a
Limited
Company. | (a) Name of the Company. |
| | (b) Address of the registered office. |
| | (c) Date of registration of the Company. |
| | (d) Date entitled to commence business. |

(e) Names of Directors, and what number of Directors (who must be qualified to act and vote) constitutes a quorum.

(f) Name of Secretary.

(g) Name of the Solicitors.

(h) Name of the Bankers.

At subsequent audits any variations in respect of the above particulars should be noted.

From the Prospectus (or statement in lieu of the Prospectus) and Memorandum and Articles of Association the following information should be obtained and recorded.

(a) The qualification and remuneration of the Directors.

(This is not required to be disclosed in statement in lieu of Prospectus.)

(b) Amount of purchase money. How to be satisfied, and amount of goodwill.

(c) Short particulars of material contracts disclosed.

(d) Shares and Debentures issued otherwise than for cash.

(e) Underwriting Commission (which must be stated in the prospectus or Statement in lieu, and authorized by the Articles of Association).

(f) The minimum subscription.

Also

(a) The objects of the Company.

(b) The powers of the Directors, and their authority (if any) to delegate same to others, and how a quorum is constituted.

(c) The Company's borrowing powers, and the means by which same may be exercised.

Summaries of all binding contracts referred to in the Prospectus, Memorandum and Articles of Association, or Minutes of the Directors should also be recorded.

A summary from the Memorandum and Articles of Association, Minutes, Debenture Trust Deed (if any), etc., of the authorized Debenture issue (if any), what is charged to same, how and when repayable, and at what premium; so also of the share capital should also be made.

Also a summary of any Articles relating to the Accounts

and the Auditors additional to those in Section 113 of the Companies (Consolidation) Act, 1908.

The Auditor should ask for a complete list of the books of account in use both financial and statistical, and a careful perusal of this list will, in conjunction with any verbal explanation he may think it advisable to obtain from the officials, make the Auditor acquainted with the nature of the business, and also with the system on which it is conducted and its transactions recorded, which knowledge it is essential an Auditor should obtain before commencing his examination of the books.

A List of
Books of great
service to the
Auditor.

In the case of a Company's audit the Secretary should be requested to supply the Auditor with a copy of the original prospectus if the Company be a new one, a copy of the Memorandum and Articles of Association should the Company have been registered under the Companies Acts, a copy of the Act if the Company has been incorporated by special Act or Acts of Parliament, or a copy of the Rules in the case of a Society registered under the Building Societies Act or the Friendly Societies or Industrial and Provident Societies Acts. Before auditing the accounts of a firm the Auditor should be provided with the Articles of Partnership, and when auditing the accounts of a Testator he should be supplied with the Probate of the will and Codicils.

Auditor
should be
provided with
a Copy of the
Regulations.

These should be carefully perused, and special notice should be taken of those sections of the Memorandum and Articles, the private Acts, or the Will, as the case may be, which in any way relate to or have any bearing on the Accounts of the Company or Society, or the duties of the Auditors.

"Auditors are bound to see what exceptional duties, if any, are cast upon them by the Articles of the Company whose accounts they are called upon to audit. Ignorance of the Articles, and of exceptional duties imposed by them, would not afford any legal justification for not observing them."—*In re Kingston Cotton Mill Co.* (No. 2) [1896], 2 Ch. 284.

The Articles of Association of a limited Company should be inspected for the purpose of ascertaining if they contain directions on the following points—

- (1) The division of the share capital into classes of shares, and the rights of the holders of each class.
- (2) The powers of the Directors as to the issue of shares and debentures.
- (3) The powers of the Directors as to borrowing.
- (4) The remuneration of the Directors.
- (5) Accounts and the audit thereof.

Should the Articles of Association not impose any exceptional duties upon the Auditor, he will, naturally, be guided by the public Acts under which the Company or Society is registered, the sections of which demanding his attention will be found in Chapter III.

When special instructions are given in the Articles of Association, or in the private Acts or Rules, as to how the Accounts are to be presented to the shareholders, and how they are to be certified by the Auditor, the sections containing these instructions are the regulations to which he is to conform subject to their not being at variance with the public Act or Acts, in which case the directions given by the latter prevail.

“It is no part of an Auditor’s duty to give advice, either to Directors or Shareholders, as to what they ought to do.

<p>No part of Auditor’s Duty to give Advice.</p>	<p>An Auditor has nothing to do with the prudence or imprudence of making loans, with or without security. It is nothing to him whether the business of a Company is being conducted</p>
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prudently or imprudently, profitably or unprofitably. It is nothing to him whether dividends are properly or improperly declared, provided he discharges his own duty to the Shareholders. His business is to ascertain and state the true financial position of the Company at the time of the audit, and his duty is confined to that.”—*In re London and General Bank* (No. 2) [1895], 2 Ch. 682.

At the first audit of the Accounts of a Company the Share Capital Account should be investigated, and the Auditor should ascertain that the share and loan capital is not in

excess of the amounts authorized by the Articles of Association or the private Acts by which the Company has been incorporated.

The contract existing between a Company and its original shareholders is almost invariably represented by a prospectus, which is accompanied by a form of application for shares. The latter usually consists of two parts, one being the actual application for the number of shares the applicant wishes to acquire in the Company. This is signed by him and addressed to the Directors, informing them that he has paid to the Bankers of the Company the application money on the number of shares applied for, and requesting them to allot him these shares, also agreeing to become a member of the Company in respect of such shares in accordance with the terms of the prospectus, or in respect of any less number the Directors may allot in respect of such application, and authorizing his name to be placed on the Register of Members for the shares so allotted.

The other part of the form of application is the Bankers' receipt, which is forwarded by the applicant for shares to the Bankers of the Company, together with the amount which the prospectus states must be paid on application for shares, in order to treat the application as *bonâ fide*, and one on which the Directors would feel justified in making an allotment.

The Bankers' receipt is signed by the Bankers, returned to the applicant, and is retained by him. The applications for shares are placed before the Board, who pass a resolution as to the shares to be allotted, and letters of allotment are forwarded to those whose applications are accepted.

When the share certificates have been prepared they are forwarded to the shareholders in exchange for the letters of allotment. These, together with the applications for shares, should be filed in the offices of the Company. By these means the contract between the shareholder and the Company is made complete, and the evidence on which the contract is based is duly recorded.

Frequently, in small Companies, the prospectus directs that the payments on application are to be sent to the office of the Company. - The Auditor should then be particularly careful to ascertain that they have been properly accounted for.

The Auditor should also see that proper entries have been made in the Books of Account for recording the particulars of the purchase of any property or business, to acquire which the Company was formed, also any charges there may have been on the property at the time of its passing into the possession of the Company. Although not part of his duty, it is desirable he should also ascertain that all Mortgages, or Bonds issued of the nature of a Mortgage, are duly recorded and registered in accordance with the Acts.

In opening the books of what is known as a Reconstructed Company, that is, a Company which has been formed to acquire from the Liquidator of another Company all the assets of that Company, he receiving as part or the whole of the purchase money shares in the new Company, there are a few special points which have to be borne in mind by the Auditor. He should peruse the deed in terms of which the new Company acquires the assets of the reconstructed Company from its Liquidator, and ascertain that the new Company has received and brought into its books of account all the property covered by the deed. He should consequently peruse the Journal entries in the books of the new Company which profess to carry out the terms of the Agreement, and he should ask to have produced to him the new Company's Balance Sheet, prepared after the reconstruction, which forms the basis of the new Company's book-keeping.

In auditing the Cash Book the debit or receipts side should be checked with the most independent source the Auditor can find available—for example, the counter-foils of Receipt Books, a Counter Cash Book, the Customers' Pass Books of a Bank, or the Depositors' Pass Books of a Building Society.

Entries in the
Books of
Account of
particulars of
the Purchase
Money.

Also of
Mortgages.

Reconstructed
Companies.

Examination
of the
Cash Book.

The items on the credit side of the Cash Book should be checked with the vouchers for the payments. This, although requiring care and attention, is a mere mechanical process; but, unfortunately, among unprofessional Auditors is considered their sole duty.

Of the
Vouchers.

The perusal of this work will, it is hoped, correct this impression, and show that an effectual audit of the Accounts, whether of a Company or any other institution, involves a far greater amount of experience, skill, and labour than is required for the mere checking and vouching the expenditure of the cash, and ascertaining that the Accounts as presented agree with the books kept by the officials.

In those audits where the internal check is not considered by the Auditor to be sufficient to render it unnecessary, the entries on the receipt side of the Cash Book should be checked with the entries in the corresponding side of the Bankers' Pass Book, for the purpose of ascertaining whether moneys have been retained by the cashier for a longer time than necessary.

Comparing
Cash Book
with
Pass Book.

A common form of misappropriation of funds is for a cashier to convert to his own use payments made by debtors, with the result that they continue to appear in the Ledgers of the Company as debtors in respect of those sums, although paid. When the cashier thinks attention may be directed to these apparent debtors he makes use of moneys received later from other debtors, to pay into the bank what he ought to have previously paid. In this way fraudulent cashiers have contrived to remain undetected for years, whereas the check recommended above would, if applied, have resulted in detection at the first audit after the commencement of the defalcations.

The Auditor has a right to demand that the vouchers shall be either kept in a Guard Book or filed in some other way, in the order of the corresponding entries in the Cash Book, so as to facilitate ready reference, and to prevent his time being unreasonably taken up by his having to search for each voucher.

Vouchers
should be
filed.

It may be here remarked that the Auditor will find it greatly facilitate his work if he makes it a rule not to accept any papers handed to him for his inspection which are not properly arranged. Should his requirements in this respect be not complied with, he should, first of all, complain to the Directors, and, if he obtains no redress, he should make a statement to this effect in his Report.

Documents
required by
the Auditor
should be
arranged.

It very frequently happens, especially in the offices of small concerns, that, on the Auditor asking for the vouchers for the cash payments, he is handed a bundle of receipted accounts, and on attempting to check them with the Cash Book he ascertains many are missing. Much time is, in consequence, lost in looking for these, or in obtaining duplicates, while, if the vouchers were previously arranged, missing ones would be found or fresh ones obtained before the commencement of the audit.

The vouchers should principally, if not entirely, consist of actual receipts, and in checking the payments to merchants or tradesmen, with the exception of those made by bills payable, the Auditor should require the receipts to be produced. In certain instances, however, secondary evidence, such as the indorsements on the cheques, may be accepted as sufficient proof that the money has been paid to the persons indicated, but indorsed cheques are merely evidence that money has been paid to the indorsees, they are not legal receipts for money paid.

Vouchers
should consist
of actual
Receipts.

Beyond requiring proof that these persons have received the money, the Auditor should endeavour to satisfy himself that the expenditure has been charged against the proper Accounts. Unless this is done, items which should be charged against revenue might be posted to a wrong Account, and subsequently improperly included in the credit side of the Balance Sheet.

The Vouchers for the purchases should consist not merely of printed receipts, but should, if possible, be accompanied by the invoices and statements, more especially when the

entry in the Cash Book is posted direct to an Impersonal Account in the Ledger. In large concerns, however, this is frequently impossible, but in these cases there is, as a rule, an independent office check.

Payments for wages are usually vouched by the production of a "Wages Book" or "Wages Sheet," in which each workman signs his name opposite the amount stated to have been paid him, and the book is also usually certified by other officials, such as—

(a) The foreman, who is responsible for the employment of the men and the rate of pay due to each; when the men are paid by time, the time charged for should be checked from the timekeeper's book.

(b) The clerk, who is responsible for the extensions, calculations, and checking of the wages sheet.

(c) The clerk responsible for the actual payment of the wages, after the deductions of any payments made in advance.

The Auditor must be guided by the circumstances of each case as to what extent his staff shall check the postings or transfers from one book to another, also as to what extent they shall check the additions. As already referred to it is advisable to have a recognized "tick" for each class of check, and if after the books have been checked an unticked item appears on those pages where all entries should have been called over, an Auditor, or the managing clerk representing him, should never assume that the item has not been ticked through the carelessness of his clerk, but should carefully re-examine the entries.

The balance, as shown in the Cash Book, should be checked with the balance in the Bankers' Pass Book. These are very seldom identical, as cheques drawn on or even before the day on which the books are closed may not have been presented for payment, neither will the bankers, unless a special arrangement has been made with them, have given credit for country cheques not cleared on that day.

Reconciliation
of the
Balance of
the Cash
Book and of
the Bankers'
Pass Book.

In order to facilitate checking these balances, a Reconciliation Statement, which may be entered in the Cash Book, should be prepared for the Auditor, a form of reconciliation statement will be found in Chapter VIII.

In comparing the balances taken out of the Ledgers into the Trial Balance, the balances should be checked at the same time the addition of each Ledger account has been proved, so as to avoid any entries being made in the Ledger accounts between the checking of the additions and the taking out of the balances.

The Journal should be carefully perused, as through it transfers are made from one Ledger account to another, frequently very incorrectly. A properly-kept Journal affords full information to an Auditor for a transfer of this description, but the "narrative" is occasionally intentionally meagre when it is desired to conceal the true reason of the entries; this absence of information should put an Auditor on inquiry.

The Auditor must use his own discretion, guided by his experience, as to how far it may be necessary to check the details found in subsidiary books. As previously stated, he should make as much use as possible of documents obtained from independent sources to guard against errors of omission.

When once an entry of any transaction is made in the books it may be said to come under the cognizance of the Auditor, and a perfect balance can only be obtained by each of these entries being carried forward, step by step, into the Ledger. The Auditor, has, however, to guard against their being carried to a wrong Ledger account, and also any other inaccuracies in the posting.

Many concerns keep their Ledger accounts on cards contained either in books or in cabinets or on removable leaves in books. This is for the sake of convenience, or for saving room or expense, but from an auditing point of view the system is not so satisfactory as is the recording of all entries

Ledger
Balances.

Journal.

Examination
of the
Subsidiary
Books.

Card System
and "Loose
Leaf" System
of Accounts.

in bound books with numbered pages, from which one cannot be withdrawn without the risk of quick detection.

Apart from the audit, however, the card system and "loose leaf" system have many advantages, which it is not necessary to set out here, and where either is in force the Auditor must direct his attention to ascertain that every precaution is taken to guard against irregularities.

The key of each Ledger or cabinet drawer should be kept by some high official, and completed cards or "loose leaves" should be taken out and new ones inserted in his presence. Under no circumstances should the Ledger clerk or any clerk working with him be entrusted with the keys.

The completed cards or "loose leaves" should be examined after being taken out by someone qualified to form an opinion as to whether the entries had ceased to affect the system of book-keeping, and they should be preserved until at least after the next audit, and at the audit they should be handed to the Auditor for his scrutiny.

As regards the general duties of Auditors in connection with their examination of the books, Lindley, M.R., in an important judgment, remarked: "An Auditor, however, is not bound to do more than exercise reasonable care and skill in making inquiries and investigations. He is not an insurer; he does not guarantee that the books do correctly show the true position of the Company's affairs; he does not even guarantee that his Balance Sheet is accurate according to the Books of the Company. If he did, he would be responsible for error on his part, even if he were himself deceived without any want of reasonable care on his part, say, by the fraudulent concealment of a book from him. His obligation is not so onerous as this. Such I take to be the duty of the Auditor: he must be honest—i.e. he must not certify what he does not believe to be true, and he must take reasonable care and skill before he believes that what he certifies is true. What is reasonable care in any particular case must depend upon the circumstances of that case. Where there is nothing to excite suspicion very little inquiry will be reasonably sufficient, and in practice, I believe,

General
Duties.

business men select a few cases at haphazard, see that they are right, and assume that others like them are correct also. Where suspicion is aroused, more care is obviously necessary ; but, still, an Auditor is not bound to exercise more than reasonable care and skill, even in a case of suspicion.”—*In re London and General Bank* (No. 2) [1895], 2 Ch. 683.

In an Irish Appeal Court, Holmes, L.J. (the Lord Chancellor of Ireland, and Fitzgibbon, L.J., concurring in the judgment delivered), stated : “ An Auditor is entitled to see the Company’s books and the materials for the books, and also to ask for explanations, but he is not called on to seek for knowledge outside the Company, or to communicate with customers or creditors. He is not an insurer against fraud or error ; and, if fraud is alleged (i.e. against the Auditor), it must be shown with precision the acts of negligence for which he is said to be responsible.”

In the same case, Fitzgibbon, L.J.; remarked : “ As regards the measure of the duty of a gentleman employed as Mr. Kevans was in this case, the result is the same, as it occurs to me, in all cases in which professional skill is employed, except one, the peculiar instance of a barrister. The measure of duty is the bringing of reasonable care and skill to the performance of the business directed to be done, having regard, first, to the contract of employment, then to the character of the business itself, to the remuneration of the defendant, and to all the other circumstances of the case. In strict rule, however, the measure of the duty is to be ascertained by applying to all the circumstances of the case the best consideration, so as to ascertain what ought to have been done under the circumstances.”—*Irish Woollen Co., Ltd. v. Tyson and Others*, Acct. Law Rep., 1900, p. 13.

An audit is said to be “ continuous ” when the Auditor, instead of commencing his duties after the Accounts have been submitted to him for audit, pays, either
Continuous
Audit.
 by himself or his staff, weekly, monthly, or other periodical visits, and checks the books, vouchers, etc., up to a certain date. There are certain advantages attendant on a continuous audit, as referred to below ;

but the one very serious objection to a continuous audit is that the figures can be altered after the books have been checked and before the audit has been completed. The only perfect system of audit is, therefore, a continuous audit supplemented by the usual audit, the expense of which few Companies, firms, or institutions care to incur.

The principal advantages of a continuous audit are—

(a) Errors are discovered earlier than they would be were the accounts only checked after the close of the balancing date.

(b) Books are more likely to be kept up to date, as book-keepers do not like to be reported on the ground they are in arrear.

(c) The Balance Sheet and other Statements can be certified at an earlier date.

The advantages of a periodical audit are—

(a) Figures cannot so easily be altered after being checked by the Auditor.

(b) The Auditor, being engaged on the details of his duties, and completing his audit in a short period, has the general scheme of audit in his mind, and is not so liable to perform his duties in a mechanical way.

(c) The control of the details of each audit are more likely to be retained in the hands of the same staff of the Auditor, instead of being entrusted to different clerks.

In auditing the Accounts of Executors or Trustees under a Will, the Auditor should in the first place be supplied with a copy of the Will. This he should peruse, and take notes of any entries found therein bearing upon his duties, such as references to legacies, annuities, specific bequests, directions as to special trusts, etc.

The Audit of the Accounts of Executors and Trustees does not in any way relieve them from responsibility of their acts should they have acted illegally.

The Accountant of Court, Scotland, who, as to the matter referred to below, fills a similar position to that of a Master in Chancery under the Judicial Trustee Rules, 1897, has no power to approve of an improper investment.

By Section 3, Sub-section (10), of the Trusts (Scotland) Amendment Act, 1884, Trustees, including Judicial Factors and Curators Bonis, are authorized to lend trust money in loans on real or heritable security; and, by Sub-section (12), in loans on debentures secured on rates or taxes levied under statutory power by Municipal Corporations.

A Curator Bonis invested his ward's money on a Bond of the Greenock Harbour Trustees, a Corporation consisting of the Magistrates, the Council, and elected Trustees. As security, the Trustees assigned to the Curator Bonis the "rates and duties and other revenues of the Harbour," but no right of obtaining possession of the works on default of payment was given. The Accounts of the Curator Bonis were audited by the Accountant of Court, and passed without comment. The Harbour Trustees made default in payment of interest.

The House of Lords held (1) that the investment was not a real or heritable security; (2) that it was not a debenture created by a Municipal Corporation; (3) that, looking to the previous Statement of Accounts of the Harbour Trust, it was not a security a prudent Trustee ought to have invested his ward's money in; and (4) that the annual audit of the Accountant of Court did not exonerate the Curator Bonis from liability.—*Hutton v. Annan* [1898], A.C. 289.

In auditing the Accounts of Partners, an Auditor must be acquainted with the Partnership Act, 1890, the sections of which referring to Accounts will be found in Chapter IV. He should also peruse the Articles of Partnership, and after the books of account have been checked in the ordinary way he should ascertain that the partners have brought the prescribed capital into the firm; that interest on the capital has been properly credited to the partners at the rate prescribed by the Deed; that the drawings of the partners do not exceed the amount authorized by the Articles of partnership, that there is properly charged against each partner any amount he has drawn on account of profits, and that no part of a partner's personal expenditure has been charged against the partnership under "Office Expenses."

Audit of
Partnership
Accounts.

If the Articles also prescribe the method of the division of profits, the Auditor should see the clauses are complied with ; but, in the absence of any Articles of Partnership, the sections of the Partnership Act, 1890, referred to, come into force.

It is always advisable, in the case of Partnership Accounts, that they should be agreed and signed by the partners, and, in ordinary practice, the Profit and Loss Accounts and Balance Sheets are entered in a private Ledger or a special book and signed by all the partners; in many Articles of Partnership there is a clause requiring this to be done.

CHAPTER IX

THE DETAIL WORK OF AN AUDIT

SYSTEMATIC method essential—Programme of the audit—Responsibility of Auditor—Responsibility of his managing clerk—Audit Note-book—Object of Note-book—Method of checking entries in books of account—Special remarks on checking items in Profit and Loss Accounts—Also items in Balance Sheets—Certificates verifying value of Stock-in-trade—Of Plant, Machinery, etc.—General remarks.

THE details of an audit should be carried out in a systematic way. In the preceding Chapter it was suggested that a "Programme" should be prepared at the first audit to be added to and revised at subsequent audits, and this "Programme" should be perused at the commencement of each audit and should be followed by the Auditor and the managing clerk placed by him in charge of the details of the audit. Where an Auditor is not a professional accountant he, as a rule, does the whole of the work ; but as nearly all audits, and certainly all audits of importance, are now entrusted to professional accountants the details of an audit are usually performed by a managing clerk of experience, and he is assisted, according to the amount of detail to be checked, by one or more junior clerks.

No matter how experienced a managing clerk may be the Auditor must always bear in mind that the real responsibility rests upon him, and that he is liable for damages in law where it can be proved that he has been guilty of negligence or misfeasance. The extent to which an Auditor may superintend the details will depend greatly upon the experience of his managing clerk, and the managing clerk naturally has the responsibility towards his employer of seeing that those working under him perform their part of the duties in an efficient way.

A managing clerk is therefore allowed to select his assistants from those members of the Auditors' staff who happen to be disengaged, but it is advisable not only that the same managing clerk be continued in charge of an audit, but also, when possible, that

the same junior or juniors should assist him, as the better they are acquainted with the books of account, the more likely they are to carry out their duties efficiently, and also to make suggestions for improvement in the audit.

It is not desirable, however, that the staff of the Auditor should become on too friendly terms with the clerks of the client, as it is distinctly the duty of the former to be able to exercise a rigid check on the work of the client's clerks. It is therefore advisable for the Auditor occasionally to make a change in his staff notwithstanding the advantages of the details of the audit being in charge of the same managing and other clerks for successive periods.

In addition to the Programme referred to a note-book should be kept for each audit for recording entries relating to the details of the audit, the notes which apply to every audit being entered in the " Programme " in preference to the note-book. The note-book should be filed with the papers relating to each periodical audit.

In the note-book should be recorded, in as few words as possible, the work performed day by day on the audit by the Auditor and his staff. The note-book serves a double purpose, first, the managing clerk can satisfy the Auditor as to his having efficiently checked the details, and secondly, it is a proof of the care exercised by the Auditor, which can be produced later on should any charge be made against him of not having performed his duties in a satisfactory manner.

Every clerk, before being engaged on any audit, must have explained to him the special marks or " ticks," referred

**Checking
Ticks.**

to in the previous Chapter, which are in use in his principal's office. As already explained, special " ticks " are employed to show the checking

of additions or casts, to show that vouchers have been checked, to show that entries in the Cash Book have been compared with entries in the Bankers' Pass Book, and also to show the checking of items posted from the Cash Book, Journal, and perhaps other books, into the Ledger. A special tick is also used to show a balance carried forward and " contras."

Voucher "ticks" are placed, as a rule, against the date column in a line with the entry in the Cash Book and Petty Cash Book, while the "tick" denoting that the same items have been checked with the entries in the Bankers' Pass Book should be placed against the money items on the right-hand side. The "ticks" showing the checking of items posted into the Ledger should be placed, both in the Ledger, Cash Book, Journal, or from whatever other book the items may have been posted, against the pages or folios of the books from which and to which they have been posted, while the additions or casting "tick" is usually placed at the foot of the money columns in the ledgers and subsidiary books.

As already explained no rigid rules as to the details of an audit can be laid down, the amount of checking that ought to be done in each audit depending entirely upon the circumstances of each case.

Rigid rules for
audit cannot
be prescribed.

In the offices of many professional accountants the details of the work to be performed at each audit are printed in the note-book, but this practice is open to objection. If an Auditor were accused of not having performed his duty efficiently, and he or his managing clerk appeared in a witness box, it might be very difficult to explain to a jury why any regulation set down in print had not been followed. The entry in the note-book is *primâ facie* evidence that the instruction neglected was considered an essential part of the audit, and that the non-compliance with it was an act of negligence.

Objection to
printed
regulations in
Audit Note-
book.

During the progress of nearly every audit points occur for investigation which cannot be dealt with immediately, while

"Queries." many can be explained forthwith; both classes of queries should be entered in the note-book.

These "Queries" should be entered on the left-hand page of the note-book, and when the answers have been obtained from the secretary, manager, or other official of a company, or from a partner or a member of his staff in the case of a firm or private audit, the answer should be written on the page opposite.

Many clerks, after queries have been satisfied, make a

practice of passing a line through the query to show that it has been dealt with ; but there is a great objection to this. If later on, any question is raised as to proper care and diligence having been taken by the Auditor there is no proper record of the queries raised or, at any rate, of the manner in which they have been answered. The more important the nature of the query the more essential it is that the explanation should be properly recorded, and occasionally it is desirable that the name of the person answering the query should also be set out.

A memorandum should be made in the note-book amplifying figures in the Profit and Loss Account and Balance Sheet which cannot be traced in sufficient detail in the books of account to show how they have been compiled, and where securities are examined, and the Auditor has not been supplied with a schedule of the investments to preserve with his papers, notes should be made to show that the investments have been carefully examined and found correct. The Auditor, or the clerk in charge of the note-book, should always bear in mind that it is better to make more notes than may be necessary than to make too few.

The following may be taken as a guide as to the steps usually taken in an audit, but it must be treated as a guide only and must not be considered as a set of rules which should be rigidly observed.

Details of Audit. Vouch the payments shown in the Cash Book with the vouchers, as explained in the previous Chapter.

Cash Book. Ascertain how cheques are authorized to be signed, and where an indorsed cheque is produced as the sole voucher inquire the reason.

Check the receipts side of the Cash Book with the corresponding entries in the Pass Book, for the purpose of ascertaining that the money is banked at the earliest possible date and not retained in hand.

Check the additions of the pages of the Cash Book, or check those of certain pages as a test.

Check the receipts side of the Cash Book from as many independent sources as possible, as referred to in the previous Chapter, so as to guard against " omissions."

Check the balance shown in the Cash Book with the certificate of the Bankers, showing the balance in their books at the close of business on the date the books were balanced. Call for the reconciliation statement previously referred to, or if such statement has not been prepared, compile one and enter it in the note-book.

Where it is considered necessary to check postings, check these from both sides of the Cash Book into the
Ledgers ledgers.

Check the additions of the ledgers, or of a certain number of pages, as a test.

Check the balances from the ledgers with the list of balances which ought to be prepared for the Auditor.

When auditing the Accounts of a newly-incorporated Company a copy of the Prospectus, the Memorandum and Articles of Association or the special Act or Acts of Parliament should be obtained and retained by the Auditor with his papers. The points
Newly Incorporated Company. to be looked into are—

The issue of the share capital and the entries in the books of account relating thereto, as referred to in the previous Chapter.

The terms of the purchase if any business or property has been acquired, and the ascertainment that the proper entries have been made in the Journal.

Notes should be taken of any contracts taken over by the Company and the Auditor should ascertain that entries have been made in the Journal relating thereto, and these should be checked.

If any commission has been paid for underwriting, the Auditor should satisfy himself that it has been properly authorized by the Prospectus or the statement in lieu of Prospectus; also that it has been duly authorized by the Articles of Association and properly entered in the books of account.

The Auditor should also make himself acquainted with the objects of the Company and the powers of the Directors, and if they have any authority to delegate their powers to Committees

or other bodies or persons, should he find that the funds of the Company have been dealt with by persons other than the Directors.

If the Company has issued debentures or borrowed money in any form, the Auditor should satisfy himself that the Directors had power to borrow and, if any limit is imposed, that such limit has not been exceeded.

The Auditor should ascertain the qualification of the Directors, and that the same has been properly acquired by those acting.

The entries in the Journal recording special transactions should be carefully scrutinized by the Auditor who should also ascertain that the entries have been properly posted into the ledgers.

In connection with the Profit and Loss Account, see that the proper proportion of rent, rates, taxes, insurance, debenture and other interest (less tax), salaries and wages accrued is brought into account. If any of these items be paid in advance and an apportionment has been made, the amount taken to credit in the Balance Sheet should be checked.

As regards salaries, ask for a list of the staff containing full details and certified by a responsible official, and compare the same with the payments made.

As regards wages ascertain who—

(a) Records the time and how it is counter-checked,

(b) Fixes the rates,

(c) Makes the calculations and extensions,

(d) Checks the same,

(e) Certifies the total amount payable,

(f) Actually pays the wages,

and ask for certificates from each.

In the audit of a Limited Company ascertain from the Articles of Association whether dividends are payable on the amount paid up on the share capital, or upon the nominal amount of capital issued. Agree the total dividend paid with what ought to be paid on the

“Share Capital,” also see whether it was payable (or voted) with or without deduction of income tax.

In the case of preference shares, it is illegal to pay the dividend without deduction of income tax.

Ascertain that the dividend was recommended by the Directors in the Minutes and approved by the shareholders in general meeting. Where dividends have been distributed out of Reserve and the proceeds applied by the recipients to taking up fresh capital in the Company, see that the following conditions have been complied with—

That the Reserve Fund clause in the Articles authorizes the payment thereof of a bonus or dividend to members.

That the Articles authorize the satisfaction of a dividend or bonus by the issue of paid-up shares, for *primâ facie*, dividends must be paid in cash.

That the members have been given unconditional right to take the dividend or bonus in cash, or that a proper contract has been filed.

That the Company has unissued shares sufficient to satisfy the bonus or dividend.

See that a sufficient amount is charged for depreciation of the “wasting assets” such as leasehold property, plant, machinery, tools, etc., so as to leave the balances of the ledger accounts, which will be transferred to the credit side of the Balance Sheet at such a figure as will represent these “wasting assets” at their proper value having regard to their being owned by a “going concern.”

See that the remuneration paid to the Directors of a Company is in accordance with the Articles, and in particular note whether—

Directors' Fees.

(a) These fees were paid for broken periods, which is not legal unless the Articles express that the remuneration is to be “at the rate of.”

(b) Their fees were paid without deduction of income tax (this is only legal if authorized by the Articles of Association or voted by the shareholders in general or special meeting).

(c) Whether the Directors have been paid travelling

expenses to attend board meetings (this is only legal when expressly provided for by the Articles, or specially voted by the shareholders).

When the remuneration or any part of it is paid by commission on sales or on profits or on any similar basis, the Auditor must satisfy himself that the calculation of the commission has been correctly made and that the amount authorized has not been exceeded.

In the case of a firm ascertain whether interest is payable on the capital of the partners, and if so that the correct amount is charged, also that the divisions of the profit or apportionment of the loss has been properly credited to or charged against the capital accounts of the partners. Also see that the drawings of the partners are in accordance with the Articles of Partnership.

Partnership
Profits
or Losses.

Check the income, whether from sales, rents, royalties, etc., from independent sources, if possible, as referred to in the previous Chapter.

Verification of
Income.

Ascertain what income should be received from the Investments and that it has been accounted for. Inquire the reason should it be found that certain investments are not producing income.

In the case of a Company see that the total transfer fees received agree with the amount which should be received, having regard to the number of transfers shown in the Transfer Register.

In connection with the Balance Sheet of a Company verify the investments in accordance with the recommendation laid down in Chapter XV, and see that the Company has power to make such investments.

Verification of
Investments.

Obtain a Broker's certificate as to the market price of same. See that the valuation in the Balance Sheet does not exceed the cost or market price, whichever is lower. In all cases the method of valuation should be disclosed on the Balance Sheet or referred to in the Auditor's Report. In the case of an investment in partly paid shares, see that the liability in respect thereof is stated on the face of the Balance Sheet.

Ascertain that the number of shares or amount of stock bought or sold is entered in the Ledger Accounts, and that the difference agrees with the number of shares or amount of stock on hand.

Ascertain what discount or commission has been allowed in respect of any issue of Debentures, and what commission has been paid in respect of placing or issuing shares, and not written off at the date of the Balance Sheet. See that any amount outstanding is stated in the Balance Sheet, pursuant to Section 90 of the Companies (Consolidation) Act, 1908.

Ascertain whether any interest has been paid out of capital and charged as part of the cost of construction; if so, see that the same is duly authorized and the amount disclosed in the Balance Sheet.

Ascertain that all other items on the credit side of the Balance Sheet of a permanent or capital nature are not increased by items which should properly be charged against revenue. In the case of Plant, Machinery, etc., a certificate should be obtained from a responsible official which may be to the following effect—

Sundry credit
items.

I certify as follows—
1. That the Plant (Machinery) (Furniture) (Fittings, etc.), belonging to _____ and included in the credit side of the Balance Sheet of _____ 19____ remained in its possession during the _____ ending _____ 19____ verifying value _____ of Plant, etc. and were in its possession at the latter date (trifling sales of old material, if any, alone excepted) and are included in the credit side of the Balance Sheet of _____ 19____.

2. That the amount expended during the (period) in repairs and renewals, which has been charged to Revenue, has sufficed to keep the said plant, etc., in good order and condition, and that the amount written off for depreciation is in my opinion sufficient for the purpose.

3. That all amounts charged as additions to the said Plant, etc., during the (period) represent real additions to capital value, as opposed to expenditure on repairs and renewals.

Signature _____

Office _____

Date _____

As regards debts due to the client, scrutinize the list of debts and go through them carefully so as to ascertain the total indebtedness of each debtor on open account and on bills, and whether the same is increasing, and if so, why.

Debtors.

Observe whether there are any exceptionally large debts, and whether they are increasing year by year, in which event obtain explanations.

Make inquiries as to debts in arrear, and if they are to be taken credit for in the Balance Sheet, obtain a certificate from a responsible officer that the same are good.

Agree the "Bills Receivable" balance with a verified list of Bills on hand at the date of the Balance Sheet, and obtain a list of Bills discounted, and not matured at the date of the Balance Sheet.

See that "Trade Debtors" or "Sundry Debtors" do not include such items as rents, rates, taxes, or insurance paid in advance, advances to directors (or loans to partners). See also that trade discount has been deducted, and a reserve made for other discounts.

As regards Stock-in-trade, compare the list of stocks and stores properly certified with the Balance Sheet figures. See that invoices dated forward have been taken into account, and generally that all goods taken into stock have been charged as purchases. Where possible, have a summary prepared, agreeing the quantities of stock at the beginning of the period, plus purchases with the quantities sold and in stock at the end of the period. Roughly test the valuation of the stock by comparing the percentage of the gross profit on the sales with that of previous years. When possible, compare the valuation of stock with invoices taken at random.

Stock-in-Trade.

The Certificate of the value taken credit for in respect of Stock-in-trade may be given in the form as shown on next page.

Creditors.

Scrutinize the list of Sundry Creditors. See that they do not include impersonal items which are not actual creditors. Obtain a certificate from a responsible officer that no outstanding amounts have been

I hereby certify that the above is a correct list of the Stock as at ----- 19___ amounting in value to £----- that that same has been taken at cost price or at market value, if lower, and that due allowance has been made for old, damaged, and depreciated goods.

Quantities taken by -----

Prices and proper allowances fixed by -----

Extensions and Additions made by -----

Checked by -----

Finally approved by -----

I further certify that the said Stock-in-Trade was the property of the Company on the said date and was then in its possession, and that it does not include any Plant, Machinery, Fixtures, or Fittings.

(Manager or other responsible Official.)

omitted, and that invoices dated forward have been taken into account.

Examine invoices filed subsequent to the date of the Balance Sheet, and see that they do not include purchases of the previous year, the goods relating to which have been included in the stock.

Agree the "Bills Payable" balance with total of the bills not due at date of the Balance Sheet, as per Bills Payable Book.

In the case of a Company the Share Capital shown on the debit side of the Balance Sheet should be checked with the Register of Members.

Capital
Account.

In the same way amounts due to mortgagees and debenture-holders should be checked with the Register of Mortgages and Charges.

If the conditions of the Debentures or Debenture stock provide for redemption of the principal by an annual sinking fund, and/or if there is a premium payable on redemption of same, see that due provision is made in the Balance Sheet. See that the issue is within the powers of the Company and also that the Board have authority to exercise the same. Ascertain whether the Debentures are duly registered, also that the interest paid is correct, and that the income tax has been deducted.

In the case of a Company see that its transactions generally

are within the objects of the Company as defined in the Memorandum of Association and within the powers of the Directors as defined by the Articles of Association.

Minutes of meetings of Directors should be inspected so as to see that all matters affecting the Accounts as resolved by a properly constituted quorum of Directors have been duly dealt with.

NOTE.—A Director who is precluded from voting by reason of a personal interest in the matters under consideration must not be reckoned as present for the purpose of making a quorum.

Compare the figures in the Balance Sheet and Accounts with the corresponding figures of the previous year, and ascertain the cause of any striking variations.

Where sundry items are grouped under a general heading in the Balance Sheet, check each group with the details and ascertain whether the heading of each group is correct.

In the case of an Audit where all the details cannot be checked, see that the checking is varied from year to year, so that the work does not become stereotyped.

See that the books are closed in accordance with the Balance Sheet and Accounts.

CHAPTER X

THE REVENUE ACCOUNT

EXPLANATION of the Revenue Account—Difference between Revenue Account and Cash Account—Trading Account—Profit and Loss Account—Trading Account of a Manufacturer—Best Method of stating a Revenue Account—Stock in hand at commencement of the Period—Purchases—Claims under Policies—Interest on Debentures—Interest on Mortgages—Interest on Calls—Amount written off Leasehold Property—Royalties—Dead Rent—Expenses of Management—Resolution of the Council of the Institute of Actuaries—Directors' Fees—Salaries—Wages—Commission—Rent, Rates, Taxes, etc.—Repairs and Renewals—Amount written off for Depreciation—Loss on Realization of Securities—Debts irrecoverable—General Expenses—Brokerage—Commission for Underwriting, etc.—Amount written off Preliminary Expenses—Interest to Shareholders—Dividends on Preference Shares—Auditor should resist proposal to pay Dividends out of Capital—Income side of the Revenue Account—Sales—Inter-departmental Profits—Returned Goods—Premiums—Shares in other Companies—Interest on Investments—Income Tax on Investments—Transfer Fees—Traffic and other Receipts—Hire—Purchase Receipts—Exchange—Premiums on Shares—Stock in hand at end of the Period—Balance of the Revenue Account.

THE Revenue Account, also called a Profit and Loss Account, is, as its latter name implies, a statement showing either how the profit has been earned or the loss has been incurred on the operations of the Company, Society, Firm, Individual, etc., for the period brought under the notice of the Auditor.

The title Revenue Account is, perhaps, a more comprehensive one than that of Profit and Loss, and is adopted in this work ; there is, technically speaking, however, a distinct difference between the two Statements.

The Statement should only be styled a Revenue Account when the income is derived from property or investments such as rents, royalties, interest and dividends on investments, and other items of this nature, while a Profit and Loss Account shows the financial result of the operations of a trading concern or a commercial adventure of any kind. A Statement showing the net gains of a professional man is usually described as a Profit and Loss Account.

The difference between a Revenue Account and a Cash

Account has already been explained, but it may be here stated that whereas the latter only shows the actual amount of cash received and paid away, the former shows, on the credit side, the income or the earnings, irrespective of whether the same has been actually received, or at the date of closing the books is due from debtors, while on the other or debit side are set forth the expenses, irrespective of whether they have been paid or are owing at the same date to creditors of the concern.

The balance of these two sides, therefore, shows whether the transactions of the period have resulted in a profit or a loss according as the credit side or the debit side is respectively the greater.

The Revenue Account of a trading Company usually comprehends the two statements known among Accountants as a Trading Account and a Profit and Loss Account, although the transactions are occasionally combined in one Statement, when it bears the latter name. A Trading Account shows the gross profit or the gross loss of the period, being the difference between the amount of stock in hand at the commencement of the period added to the purchases, wages, and other expenses incidental to production, as against the sales and the stock in hand at the end of the period.

The balance of this Account is carried forward to the Profit and Loss Account, and is then charged with the general expenses incidental to carrying on the business. The balance, after bringing in these charges, shows the actual or net profit, or the loss, of the period.

In auditing the Accounts of a manufacturing concern, the Auditor should impress upon his client the great desirability of carefully separating the expenditure between the cost of production and the cost of distribution.

To carry this out the Trading Account should be divided into two Accounts. The first may be described as a

Manufacturing Account against which should be charged the cost of the materials consumed and the wages paid for the production of saleable goods. There should also be charged all such expenses as rent, rates, and taxes on the buildings containing the machinery; the rating of such machinery, the depreciation thereon, and in some cases the cost of packing, or otherwise preparing for the market the manufactured article. Some persons, with the object of still greater accuracy, charge the same Account with interest upon the Capital embarked in the buildings, plant, and machinery, and also on the stock held from time to time.

These total charges form the actual cost of the manufacture of the articles dealt in by the manufacturing concern, and from such Account the proprietors can ascertain exactly the percentage of gross profit made by its factory, and by extending the system can also ascertain the percentage of gross profit on as many separate articles of manufacture as may be selected. The balance of this Account, after taking into consideration the stocks, can then be taken to the second part of the Trading Account which, after being credited with the sales, will be charged with the cost of distribution, to include salaries and wages of clerks and warehousemen, also the dispatching of goods, the cost of the books and stationery, salaries and expenses of travellers, outlay on advertisements and general trade expenses, including packing not already charged, and after crediting this Account with the sales, value of the goods returned, etc., the balance will show the net trading profit. On this net profit the proprietors of the manufacturing concern can again ascertain the percentage the expenses and distributing department bear to the sales, and this enables them to watch and consequently control such expenses.

The best method of stating the Revenue Account or Profit and Loss Account of a trading, manufacturing, or mining Company is to divide it into three sections, the first showing the gross profit or loss (as the case may be) and the second the net profit or loss (as the case may be) of the period. In the third section should be set forth, as explained hereafter,

Best method of
stating a
Revenue
Account.

any appropriation there may have been of the balance of this and previous Revenue Accounts, such as payments of Income Tax, Excess Profits and any dividends, whether interim or final, paid to shareholders, resulting in an actual surplus or deficiency to date of the transactions of the Company.

Although the amount payable in respect of Income Tax must as a matter of precaution be taken into consideration before arriving at the amount available for distribution among shareholders by way of dividend, yet it should be placed in the third section of the Revenue Account, as it is not chargeable against profits for the purpose of arriving at the profit, but is a tax payable upon the profit when ascertained, and consequently part of the appropriation of the profit.

It is impossible to discuss in detail every description of income and expenditure which can possibly come under the notice of an Auditor, for as almost every class of business is registered under the various Joint Stock Companies Acts, such may almost be said to be innumerable. The most familiar headings, however, which occur in the Revenue Accounts of Companies, firms, and individual traders are treated in the present chapter, the remarks on one or more of which will afford assistance to an Auditor requiring information as to how an item of income or expenditure, not specially referred to, should be treated.

It comes within the province of an Auditor's duty to ascertain that the various items of expenditure are stated under the proper headings, for although an incorrectness in this respect would not affect the net result, yet shareholders have a right to know the exact manner in which their revenue has been expended, and to have the opportunity of refusing to pass an improper outlay.

Commencing with the debit side of the Revenue Account, in all trading concerns the first heading is Stock in hand at commencement of the period. usually the Stock in hand at the commencement of the period which comes under the investigation of the Auditor.

In the case of a new concern this item will not appear ;

and when a Company has previously published a Revenue Account, the duty of the Auditor is solely confined to ascertaining that the figure coincides with that under the heading of "Stock in hand" at the date to which the previous Revenue Account was made up.

The figures, as certified by him or by a previous Auditor and adopted by the shareholders at their meeting, cannot be afterwards altered; but should the Auditor ascertain that any figures in the previous Accounts are inaccurate, he should either require a correcting entry made in the Accounts he is auditing, or else he should call attention to the fact in his Certificate or Report, as an explanation why the apparent profit or loss, as the case may be, has been unduly increased or diminished by the inaccuracy of the previous Accounts presented to the shareholders.

The item naturally coming after the stock-in-trade is that representing the additions made to it during the period em-

Purchases. braced by the Revenue Account. The single word "Purchases" is the usual heading, under which is included the cost of the goods purchased which are intended to be resold at a profit. The amounts paid for plant, machinery, office furniture, etc., necessary for the purpose of carrying on the business, do not appear in the Revenue Account.

In accordance with the theory (already explained) on which the Revenue Account is prepared, it is immaterial whether the goods purchased have been paid for at the date of closing the books or are still owing for. The total amount has to be included under "Purchases," and the amounts outstanding will be found among the liabilities in the Balance Sheet under the heading "Creditors."

In Insurance Companies of every description, life, fire, accident, marine, guarantee, burglary, etc., the principal charge against the Revenue Account consists

Claims under Policies. of the "claims" under its Policies, and in dealing with this item the Auditor has to be careful that not only those claims which have been made during the period, and in respect of which the stipulated

amount of compensation has been paid, are included under this heading, but also in addition those that have been notified to the office.

It is impossible to lay down any rules to be followed by an Auditor by which he may ascertain that all the claims received have been entered in the "Register of Claims" and charged against the Revenue Account. Instances have occurred of Managers concealing letters announcing heavy losses until after the books have been closed, and experience only can guide an Auditor in the discovery of a fraud of this nature.

When an Auditor has any reason to suppose claims are being concealed from him, it is useful to ascertain whether the percentage the claims notified bear to the premium income is unusually low, either in the aggregate or in the case of any particular country or district, and ask the Directors for an explanation.

The Auditor may, at his discretion, allow a deduction to be made in respect of any claims which the Company do not admit themselves liable to pay, and which they intend to resist. The opinion of the Company's Solicitor would be of assistance to the Auditor in determining the amount to be thus deducted.

All amounts included under the above heading, which have not been paid at the date on which the Books are closed, must be brought into the Balance Sheet as a liability.

When a Company has borrowed money on Debentures the holders of these Debentures are creditors of the Company, and, therefore, the interest payable to them must be kept distinct from that paid to the shareholders, which represents payment on account of profits.

Interest on
Debentures.

The former must be charged against the Revenue Account before the profits, out of which Dividends can only properly be paid, are ascertained. The interest paid to the Debenture-holders is not dependent on profits, and the rate per cent. is arranged at the time of issuing the Debentures.

The same remarks are applicable to the interest payable to

those who have advanced money to the Company on ordinary mortgages of its property.

The Articles of Association of Companies registered under the Companies Acts usually authorize the Directors to receive from any Member, willing to advance it, all or part of the money uncalled or unpaid upon the shares held by him, and to pay interest on the money so paid in advance at such rate as shall be agreed on. Such interest, which must not exceed six per cent per annum, unless a higher rate has been sanctioned by the Company in general meeting, is payable out of the general assets of the Company, including its available capital, and not merely out of profits.—*Dale v. Martin*, 11 L.R. Ir. 371, C.A.

When leasehold property forms part of the assets of any concern the Auditor should be satisfied that a sufficient portion has been written off each lease and charged against the Revenue Account, so that a proportionate decrease takes place each year in the amount standing at the debit of the account of each lease in the books until its expiration. This statement is, however, subject to the remarks which will be found later on in this chapter under the heading of "Amount Written Off for Depreciation," in connection with the case of *Lee v. Neuchatel Asphalt Company*, 41 Ch. D. 1.

Leasehold property may be held by a concern either as an investment or for occupation. In either case the above remark applies, while the rents received from the investment, after deducting the incidental expenses, such as law costs, repairs, rates, taxes, etc., should be included among the income. When a concern occupies its own leasehold premises, the proportion written off is equivalent to a rent, and should be treated accordingly.

A table for calculating the amount to be set aside annually in order to exhaust a lease will be found in the Appendix, with directions explaining how it is to be used, also an example in the form of a Ledger Account showing how a lease is gradually exhausted in this manner. The interest calculated on each balance brought down and debited to the Lease

Account is taken credit for in the Revenue Account among "Interest on Investments."

The Revenue Account of Mining concerns should be charged with the royalties (sometimes called
Royalties. tentail or acreage rents) payable in respect of all minerals sold during the period under audit or taken to credit in the Balance Sheet as stock. Any dead rent (sometimes called certain or minimum rents) for the
Dead Rents. same period should also be charged against the Revenue Account, but the Auditor may allow the concern to take credit in the Balance Sheet for any dead rent so charged, which it is expected will be recouped out of royalties before the limit of time allowed for that purpose in the Lease shall have expired.

With reference to the expenses of management, it is usual in large Companies to place Directors' fees, salaries, wages, and general office expenses under one head,
Expenses of Management. but in small Companies they are generally set forth in detail in the Revenue Account.

In either case the Auditor should be equally careful to ascertain that all the expenses are included. As already explained, it does not affect the amount which should be here set forth, whether all the items have been actually paid or not, settled or still owing, they must all be charged against the Revenue Account.

Very often an attempt is made, especially in the first Revenue Account of a Company, to omit certain charges on the ground that they have not been paid, or that the exact amounts are not known or have not been agreed upon. This the Auditor should strenuously resist, and should recommend that the completion of the Accounts should be deferred until the doubtful amounts have been ascertained or a satisfactory estimate has been made, and the amount included in the Revenue Account.

With reference to the Revenue Accounts of Life Assurance Companies, the following resolution was passed at a meeting of the Council of the Institute of Actuaries in consequence of an inquiry made of them by the Board of Trade,

“ That, in the opinion of the Council, every expense, of whatever kind, incurred by a Life Assurance Company for the purpose of promoting, carrying on, or extending the business of the Company, should, with the exception of Commission, be included under the head of ‘ Expenses of Management ’ in the Accounts registered in conformity with the Act.”

Resolution of
the Council of
the Institute of
Actuaries.

The following remarks on the various expenses incidental to the conduct of the business of public Companies are equally applicable, whether they are set forth in detail in the Revenue Account or are embraced under one comprehensive heading, such as, for example, “ Expenses of Management.”

It has just been remarked that very frequently in preparing the first Revenue Account of a Company in order to make it appear as favourable as possible, the officials leave out charges on the ground that they have not been paid, or perhaps not even ascertained ; this remark is applicable to Directors’ fees.

Now, on the principle previously laid down that a Revenue Account is a statement of the actual income and expenditure of the period, and not of receipts and payments, this explanation should not be considered satisfactory by the Auditor. Unless the Board actually pass a resolution at one of their meetings, which is entered in the minute book in the usual way, that they do not intend to receive any remuneration for their services to the date on which the Accounts are made up, the Auditor should, require a note to be made on the Revenue Account itself, or, failing that, he should in his Report call attention to the fact that the profit shown is subject to the amount to be paid to the Directors. It might, in fact, be contended that as the Accounts are those of the Directors themselves, the absence therefrom of any amount in respect of fees would *ipso facto* debar the Directors from legally claiming them.

Directors’
Fees.

Sometimes the amount of the remuneration of the Directors is fixed by the private Act incorporating the Company, or the Articles of Association, and may be either a stated sum or a commission on the sales, income, gross profit or net

profit, etc., or even a combination of these. When this is the case it is easy to determine the amount to be charged in the Accounts, and if the Directors have not received it they must be included among the creditors of the Company in the Balance Sheet for the sums due to them respectively.

When, however, the remuneration of the Directors is either partly or entirely a percentage of the profits, whether distributed or not by way of dividend, an Auditor has frequently great difficulty in satisfying himself that the amount charged in the Accounts is correct. In order to increase these profits, Directors are liable to treat the amount to be charged against Revenue for depreciation, for possible loss on realization of debts, or for possible loss on realization of some of the other assets, with a far less liberal hand than they would do were they considering the effect of depreciation solely with a view to preparing accurate Statements of Account. It therefore behoves the Auditor to pay very special attention to all these points when the Directors' remuneration is dependent upon the manner in which these items may be treated.

A still more difficult question arises when the Directors of Financial Companies are entitled to a percentage on the profits, as it is not easy to determine the profits on which the necessary calculation has to be based. The ascertainment of profits of Companies of this description is referred to in Chapter XIV, in connection with the "Single Account System."

Frequently the remuneration of the Directors is left in the hands of the shareholders, to be voted at their General Meeting. In such a case it should be clearly stated on the face of the Revenue Account that the profit shown is subject to the amount which it will be the duty of the shareholders to vote to their Directors for their services during the period embraced by the Accounts. Failing this, the Auditor, as already stated, should specially report to the shareholders the omission, and point out that the profit will be reduced by any sum voted to

the Directors, or, if there be a deficiency that it will in the same manner be increased.

The assets of an incorporated Company, even when a private Company, are not the property of the shareholders for the time being, and if the Directors misapply those
 Presents to Directors. assets by applying them to purposes for which they cannot be lawfully applied by the Company itself, the Company, upon being properly set in motion, can make them liable. Directors cannot pay themselves for their services, or make presents to themselves out of the Company's assets, unless authorized to do so by the instrument regulating the Company, or by the shareholders at a properly convened meeting.—*In re George Newman & Co.* [1895], 1 Ch. 674.

By an Agreement of April, 1893, a Company arranged with the plaintiff to manage, develop, and realize his estates on certain terms as to remuneration, and in the course of such management employed one of its Directors, who was a Solicitor, to act professionally for the estates and paid his bill of costs, which included profit items; another Director, who was an estate agent, to manage at a salary a business connected with the estates; another Director, who was an auctioneer, to act as auctioneer on all sales of the estates at the usual commission; and gave its secretary, who was a Chartered Accountant, an additional salary for keeping the books of the estates, which were of a complex nature—

Held, that on the construction of the Agreement the Company were not entitled to make any charge for or in respect of the keeping of the accounts required to be kept by the Company.

Held also that the Directors stood in a fiduciary relation to the Company, but not to the plaintiff, and that the profit, costs, salary and commission paid to the Directors in their professional capacity might be allowed in taking the accounts between the plaintiff and the Company under the Agreement.—*Bath v. Standard Land Company, Limited* [1911], 1 Ch. 618.

Directors who are remunerated for their services are not entitled, in the absence of a resolution of the Company, or a provision in the Articles, to be paid out of the assets of

the Company their travelling expenses incurred in attending Board Meetings.—*Young v. Naval, Military, and Civil Service Co-operative Society of South Africa, Ltd.* [1905], 1 K.B. 687.

Directors who receive the maximum remuneration allowed by the Articles or voted by the shareholders are not entitled to pay out of the funds of the Company the income tax payable on their fees, as these fees are chargeable with duty under the Income Tax Act, 1842. A clause, however, in the Articles of Association sanctioning the payment of income tax by the Company appears to be sufficient authority for an Auditor to pass without comment income tax so paid, notwithstanding the clause in the Act that “All contracts for the payment of any such annual payment in full, without allowing such deduction for duty, shall be utterly void.”

When the Directors receive the maximum remuneration authorized by the Articles of Association, the shareholders have no power to pass a resolution voting the Directors the payment of the income tax thereon in addition, as Articles fixing the qualification and remuneration of Directors being binding on the Company as well as the Directors, the Company cannot ratify an act of the Directors in contravention of such Articles without first altering them by special resolution.—*Boschoek Proprietary Co., Ltd. v. Fuke* [1906], 1 Ch. 148.

The remuneration of the Secretary, Manager, Clerks, and other officials on the regular staff of the Company is usually included in one sum among the outgo of the Revenue Account, under the heading “Salaries,” and should be kept distinct from the sums paid as wages to workmen, artisans, mechanics, and others, whose remuneration is contingent on the quantity of work done, and fluctuates accordingly.

Directors’ fees should never be included with the salaries, but the fixed remuneration of a Managing Director always should be unless stated separately.

In many Companies a Managing Director, a Manager and other officials are paid entirely by a commission, or are

allowed, in addition to their fixed salary, a commission on the amount of the business done by the Company or in a particular department, or on the gross or net profit. In such cases the commission should not be included under the heading "Salaries," but should be stated by itself.

When a Managing Director or Manager of a Company is paid either partly or entirely by a commission on the "net profits" the Auditor may have great difficulty in satisfying himself whether the amount inserted in the Revenue Account has been arrived at on a proper basis. The following cases point out the necessity of great care being exercised, and it is advisable, where there is doubt, for a legal opinion to be obtained before the Accounts are signed by either the Directors or the Auditor.

By a clause in an Agreement between a Company and its Manager he was to receive a fixed salary, and also, as soon as the profits for the year had been ascertained and certified by the Company's Auditors, a percentage of the "net profits (if any) of the Company for the whole year." The Agreement provided as follows: "For the purpose of this clause the words 'net profits' shall be taken to mean the net sum available for dividends as certified by the Auditors of the Company after payment of all salaries" and other items, which did not include certain items which would be deducted before arriving at the net profits or the income tax payable by the Company.

The Balance Sheet for one year showed a certain amount of profits including the income tax payable by the Company, and the Auditors gave a special certificate that the percentage payable to the Manager was calculated on the amount of profits less income tax—

Held (1) on the principle laid down in *Attorney-General v. Ashton Gas Co.* [1904], 2 Ch. 621 (affirmed [1906] A.C. 10), that the income tax was part of the net profits available for dividends, and that the Manager was entitled to be paid his percentage on the net profits before deduction of the tax; and (2) that, the Certificate being based on a wrong principle, the Court was not bound by it.—*Johnston v. Chestergate Hat Manufacturing Company, Limited* [1915], 2 Ch. 338.

Under an Agreement of service, made in 1914 between the defendant and the plaintiff Company, the defendant became the Managing Director of the Company for a term of ten years at the fixed salary of £600 per annum plus "a commission of 25 per cent. on the net profits of the business" of the Company. Clause 5 of the Agreement provided how these net profits were to be ascertained, and directed that from the gross profits earned by the Company there should be deducted in addition to the usual trade expenses and charges (1) a certain percentage for depreciation of land and buildings and trade machinery and plant; (2) a sum for displacement of buildings and plant; (3) a sum for repairs and renewals; (4) the amount necessary to pay a dividend of 8 per cent. on the issued share capital of the Company; (5) Directors' fees; and (6) interest on loans and bank overdrafts; but that no deductions should be made for (a) any bonus to Directors; (b) life insurance premiums on the defendant's life; (c) income tax on profits under Schedules A and D; and (d) any commission or bonus paid out of profits to any employee of the Company. The Company made large profits for the years 1915 and 1916, in respect of which the excess profits duty under the Finance Acts was payable, and issued a summons to determine whether, in ascertaining for each year the net profits of the business for the purpose of the Agreement of service, the excess profits ought or ought not to be deducted before the defendant's commission was calculated.

It was held by Neville, J., that the excess profits duty ought not to be deducted from the profits of the Company before the commission of the defendant was ascertained. In his Lordship's opinion the judgment of Buckley, J. (as he then was), in *Attorney-General v. Ashton Gas Company* [1904], 2 Ch. 621, which was affirmed by the Court of Appeal (ib. p. 626), and upheld in the House of Lords ([1906] A.C. 10), was a guide in arriving at a conclusion on the matter.—*Fellows Limited v. Corker* [1918], 1 Ch. 9.

By an agreement dated 30th October, 1916, the defendant was appointed works manager of the business of the plaintiff company at a salary. The company agreed also to pay him

at the end of each business year of the company, and within seven days of the holding of the annual general meeting, a further sum by way of commission being a percentage upon the "net profits" for the year. There was a proviso that the certificate of the company's auditor should be conclusive as to what constituted net profits at the end of any such business year—

Held, on construction, that "net profits" of the business for the year were the excess of the receipts for the year over the current expenses and outgoings of the same year—i.e. the fund which for that year was capable of being lawfully applied by the company to the payment of a dividend.

Held, as matter of law, that that fund could only be arrived at after deducting excess profits duty, which was a debt of the company to the Crown.

Held, therefore, that the commission ought to be calculated after deduction of excess profits duty.

Patent Castings Syndicate, Limited v. Etherington [1919] 2 Ch. 254.

By an agreement made in 1912 the defendant was appointed works manager of the business of the plaintiff company at a salary, and in addition he was to be paid a commission equal to £50 for every 5 per cent "profit earned by the company" (or fraction of 5 per cent *pro rata*) after 10 per cent had been earned by the company—

Held, that the words "profit earned by the company" meant profits divisible among the shareholders, in other words "net profits," and upon the authority of the decision of the Court of Appeal in *Patent Castings Syndicate v. Etherington* [1919] 2 Ch. 254, that in arriving at the fund upon which commission was payable excess profits duty must first be deducted.

Hollins & Co. v. Paget [1917] 1 Ch. 187 overruled.

Vulcan Motor and Engineering Company [1906] *Limited v. Hampson* [1921] 3 K.B. 597.

When a bonus is given to any of the officials of a Company the amount should either be stated separately or the heading should be extended to "Salaries, including Bonuses to Officials."

This remark applies to any pensions paid to retired officials of the Company.

When commission is paid for influencing sales, or any description of income, the amount so allowed should either be stated by itself or else (except in the Revenue Accounts of Companies transacting Insurance business) included in the general heading, "Expenses of Management."

Commission.

Commission should never be deducted from the sales, or from any other source of income for securing which the commission is allowed.

The amount stated in the Revenue Account as commission must consist not only of that which has been actually paid, but must also include any remaining unpaid in respect of the income taken credit for on which the commission is payable. To ascertain the correctness of this sum is often a troublesome task for the Auditor, as frequently attempts are made to omit or understate the amount of commission which has not been actually paid in order to increase the apparent profits.

When an agent or traveller has received money in advance to be deducted from commission expected to be earned by him in the future, that portion only which has been earned on income taken credit for in the Revenue Account should be charged. The balance should be treated as an ordinary cash advance, and the agent should be included among the debtors on the credit side of the Balance Sheet for the unearned portion of the commission.

The Auditor should ascertain that the commission has not been participated in by any person acting in a fiduciary capacity towards the Company, unless this is expressly provided for in the Special Acts of Parliament or in the Articles of Association. This remark applies also to brokerage for placing Share Capital, Debentures, etc.

Under the heading of "Rents, Rates, Taxes, etc.," should be included the rent of all offices and premises

**Rent, Rates,
Taxes, etc.**

on which the business of the concern is transacted, together with the rates and taxes incidental thereto, but it should not include the rent paid for premises which are sub-let to other tenants.

In other words, when only a portion of the premises of which the concern are tenants is used by it as their place of business, and the remainder is sub-let, there should only be included under the heading "Rent, etc.," the difference between the rent paid by the concern and that received from its sub-tenants. It would, therefore, be wrong to put the rents received from the concern's sub-tenants of their actual business premises on the income side of the Revenue Account, and the entire rent for the premises on the expenditure side. The heading, "Rent, Rates, and Taxes," consequently refers only to those amounts which might be included under the heading "Expenses of Management."

The amount which ought to be charged against the Revenue Account of concerns possessing plant, machinery, buildings, etc., for repairs, frequently requires very careful attention by the Auditor.

Repairs and
Renewals.

Unless a Company is in a flourishing condition, there is a great tendency to add to the account in the books representing the property those sums which have actually been expended in repairing or replacing part of them, and which ought, therefore, to be included in the expenditure side of the Revenue Account under "Repairs and Renewals," or some similar heading.

This the Auditor should protest against, the necessary buildings having been erected, and the plant and machinery purchased, the Accounts representing the expenditure thereon should be closed, and no additions permitted, unless sanctioned by the Memorandum and Articles of Association. Should the business, however, increase, and additional buildings and machinery become necessary, the further expenditure on this Account may be added to the capital amounts in the Ledger and consequently be carried to the credit side of the Balance Sheet, but the whole of the money laid out for keeping these assets in order must be charged against the Revenue Accounts.

In exceptional cases, as, for example, if the sum expended on repairs and renewals be very heavy in any one year, and the Auditor is satisfied it will suffice for the next two or three years, he may, provided the Accounts as submitted to the

shareholders show it clearly on the face of the Accounts, allow the amount to be placed to a separate Account, a proportion only being charged against the Revenue Account for the ensuing years, leaving the balance temporarily on the credit side of the Balance Sheet.

The Auditor should also satisfy himself that a proper amount has been written off as depreciation in respect of wear and tear and obsolescence of plant, machinery, etc. This is usually a percentage on the cost, and small or large according as it has to be seldom or frequently replaced, the object being to charge the Revenue Account of the period with a proper sum for the use of the plant, etc., and for the balance of the Ledger Account carried to the credit side of the Balance Sheet to represent its proportionate value as the property of a going concern.

In many Companies it is the practice to add the sums periodically expended on the purchase of new machinery to the General Plant Account, and to write off a fixed percentage on the balance against each Revenue Account. This is not a scientific method, but if adopted by the Directors of a Company the Auditor cannot raise any objection, provided he is satisfied the balance of the Account as it appears on the credit side of the Balance Sheet represents fairly and reasonably the value of the asset as the property of a going concern.

It is in the early years of a Company's existence its Auditor has frequently great difficulty in inducing Directors to charge against the Revenue Account an amount sufficient to provide for the depreciation of the period embraced by the Accounts.

A new enterprise usually requires time to show its usefulness, but, in anticipation of success, certain items of expenditure are as heavy in its early years as they are when the business transacted is greatly increased. The rent of premises, cost of maintaining plant and machinery, and the salaries and wages of an efficient staff, frequently press so heavily on the revenue of a newly incorporated Company that the only way of paying a dividend is to defer charging the Revenue Account with a proper amount for depreciation, and this an Auditor should not allow to be done without the knowledge of the shareholders.

The Goodwill of a trading Company is fixed capital, and in ascertaining profits it is not necessary to make good any depreciation in respect of it.—*Wilmer v. McNamara & Co., Ltd.* [1895], 2 Ch. 245.

The case of *Lee v. Neuchatel Asphalte Company*, 41 Ch. D. 1, in which the doctrine was laid down that there is nothing in the Companies Act, 1862, and subsequent Acts to prohibit a Company formed to work a wasting property, as, e.g. a mine or a patent, from distributing, as dividend, the excess of the proceeds of working above the expenses of working, nor to impose on the Company any obligation to set apart a sinking fund to meet the depreciation in the value of the wasting property, has been misunderstood. The Court decided nothing more than the particular proposition that some Companies with wasting assets need have no depreciation fund.—*Bond v. Barrow Haematite Steel Co.* [1902], 1 Ch. 367.

Whether a Company formed to work a wasting asset can so treat its expenditure in its Accounts depends entirely on its Memorandum and Articles of Association. In those Companies where it is permitted, if the expenses of working exceed the receipts, the Accounts must not be made out so as to show an apparent profit, and so enable the Company to pay a dividend out of capital, but the division of the profits without providing a sinking fund is not such a payment of dividends out of capital as is forbidden by law. In the course of his judgment in *Lee v. Neuchatel Asphalte Company*, Stirling, J., made the following remarks: "It may be that in some future year the Company will have to set apart a substantial sum to represent depreciation in the value of the concession; but so long as the capital remains intact, and the current receipts exceed the current expenditure, both according to the general law and under the provisions of these particular Articles of Association, it rests entirely with the shareholders to decide whether the excess shall be divided among them or set apart as a reserve fund for replacing wasting assets, and the Court has no power to interfere with their decision, however foolish or imprudent it may seem to be."

In the Court of Appeal, Lindley, L.J., remarked: "Now we come to consider how the Companies Act is to be applied to the case of a wasting property. If a Company is formed to acquire and work a property of a wasting nature, for example, a mine, a quarry, or a patent, the capital expended in acquiring the property may be regarded as sunk and gone, and if the Company retains assets sufficient to pay its debts, it appears to me that there is nothing whatever in the Act to prevent any excess of money obtained by working the property over the cost of working it from being divided amongst the shareholders, and this, in my opinion, is true, although some portion of the property itself is sold, and in some sense the capital is thereby diminished. If it is said that such a course involves payment of dividend out of capital, the answer is that the Act nowhere forbids such a payment as is here supposed."

Lopes, L.J., also remarked: "It is said by the Appellant that a Company is not at liberty to pay a dividend unless they can show that their available property at the time of declaring the dividend is equivalent to their nominal or share capital. In my opinion such a contention is untenable. Where nominal or share capital is diminished in value, not by means of any improper dealing with it by the Company, but by reason of causes over which the Company has no control, or by reason of its inherent nature, that diminution need not, in my opinion, be made good out of revenue. In such a case a dividend may be paid out of current annual profits, out of profits arising from the excess of ordinary receipts over expenses properly chargeable to the Revenue Account, provided there is nothing in the Articles of Association prohibiting such an application, and provided it is done honestly. It appears to me that if a contrary view were adopted it might be successfully contended that where, owing to extraneous circumstances, the capital is increased in value, that increase might be dealt with as revenue or profits, and go to increase the dividend. This is contrary to all practice, and I think contrary to principle. The capital and the revenue accounts appear to me to

Lord Justice
Lindley's
Judgment.

Lord Justice
Lopes'
Judgment.

be distinct and separate accounts, and for the purpose of determining profits, accretions to and diminutions of the capital are to be disregarded." . . . "The capital in an undertaking like this is in its inherent nature wasting. The scheme of this undertaking is that there should be a gradual exhaustion of material; the wasting is the business of the Company, and without such gradual exhaustion there would be no revenue."

The decision of the Court of Appeal relieves the Auditor of responsibility in those cases where the Articles of Association are on similar lines, but it is certainly his duty to point out to the Directors that to declare dividends without creating a reserve for wasting property is a suicidal policy, and contrary to the practice of soundly-managed public Companies.

For the purpose of ascertaining whether the amount charged for depreciation of a "wasting asset" in a Revenue Account submitted to him for audit is proper, the Auditor has five points to consider—

1. The original cost of the asset.
2. The outlay, if any, which has been added to the asset beyond its original cost.
3. Its efficient life.
4. Its estimated value when it will cease to be of use for the particular business for which it has been acquired—that is, its estimated value at the close of its efficient life.
5. Whether the amount taken credit for in the Balance Sheet represents the proper value of the asset as the property of a going concern, having regard to the number of years still to run of its efficient life.

The original cost of the asset will, in most cases, be ascertainable from the books, and regard must be had by the Auditor as to whether the asset was new when it was acquired by the Company, or whether it had been in use by any previous owner before coming into the Company's possession. There must also be taken into consideration as to whether there has been any additional outlay thereon of a capital nature, or whether a part, or even the whole, of such outlay ought to have been charged against revenue.

In considering the efficient life of an asset, regard must be had as to its durability, and to the manner in which it is used, such as daily constant use, or only temporary use from time to time. Another factor is as to whether any important improvements have been made in the class of asset since its acquisition by the concern, which might consequently render it necessary to replace it by something more efficient before it would be worn out in the ordinary course of business.

An Auditor cannot be expected to have such a technical knowledge as would enable him to form his own opinion from an inspection of the asset itself, he can only examine entries in the books relating to each wasting asset, and supplement the information gained therefrom by inquiry, and it will depend, very often, on the experience of the Auditor as to whether he obtains such information as will enable him to come to a right conclusion. His inquiries should be directed to satisfying himself that, after the agreed amount of depreciation has been charged against revenue, the balance of the ledger account transferred to the credit side of the Balance Sheet represents a proper value to put on the asset, having regard to the fact that it is the property of a going concern, and to the estimated efficiency of its life.

Should a loss be sustained by a Company on the realization of any of its capital invested on mortgage or any class of securities, the amount should be distinctly stated in the Revenue Account, and not be concealed by being included in any item of expenditure.

When there are many Ledger Accounts of customers of a trading concern, there is almost certain to be a loss on the realization of the outstanding balances due to the concern, as it is practically impossible for any extensive business to be carried on without bad debts being occasionally incurred.

An Auditor cannot be expected to be acquainted with, or even to ascertain, the financial position of those he may find by the books are indebted to the concern, but it is clearly part of his duty to take all reasonable means to prevent

the concern taking credit for sums appearing by the books to be due to it, the whole of which it is certain will not be eventually received.

He should, therefore, have prepared for him a list of all those who were indebted to the concern at the date on which the books were closed, and this he should go through carefully with the official who, in his opinion, is the one most likely to be acquainted with the financial position of these debtors.

It is a very convenient plan to have prepared for an Auditor a list, classifying the debtors under three headings, namely, good, doubtful, and bad. The amount due from the first may be fully taken credit for in the Balance Sheet, but with regard to the doubtful debts, only a percentage, such as 60, 75, or 90 per cent, of the total amount should be assumed as likely to be eventually received, while the balance of 40, 25, or 10 per cent, together with the total of the debts returned as bad, should be charged against the Revenue Account as "Debts Irrecoverable," or under some similar heading. "No Balance Sheet can be made out for any useful purpose without distinguishing good, bad, and doubtful debts."—*In re Frank Mills Mining Co.*, 23 Ch. D. 57.

When a concern employs agents who are allowed to receive payment for goods or to collect money on its behalf, the balances due from them at the end of the period under audit may be treated in the same manner.

In many concerns it is usual to write off a small percentage such as one or one and a half per cent. on the sales, and charge that amount against the Revenue Account as a provision for losses estimated to arise on realization. When, however, this plan is adopted, the Auditor must be careful that the rate per cent. is sufficiently high. Even then it is not so satisfactory a way of determining the amount which ought to be written off as an allowance for bad debts as in going through the list of debtors *seriatim*, and treating the balances in the manner recommended above.

Items of expenditure which are not of sufficient importance to require separate headings in the Revenue Account are

usually included in one general heading such as "General Expenses." The Auditor, however, should for his own information see an analysis of this expenditure, as it may possibly contain some unauthorized payments which, in the case of a Company, he should call attention to in his Report to the Shareholders.

The expense of printing and sending out proxy forms containing the names of certain of the Directors as proxies for a General Meeting of Shareholders, and for stamping and paying the return postage thereon, has been held to be properly payable out of the funds of the Company in a case where it was the duty of the Directors to inform the shareholders of the facts of their policy, and the reasons why they considered that this policy should be maintained and supported by the shareholders.—*Peel v. London and North-Western Railway Co.* [1907], 1 Ch. 5.

The expenses of issuing proxies to procure votes, not for the interests of the Company, but in the interests of the Directors personally, would probably be held to be not properly payable out of the funds of the Company.

The payment of brokerage or commission to a stockbroker for placing a Company's shares was in 1889 held to be an improper application of its capital, and not authorized even by a power given by the Memorandum of Association to do whatever may be "conducive to" the specified objects of the Company.—*In re Faure Electric Accumulator Co.* [1889], 40 Ch. D. 141.

This case, however, has been interpreted by the Court of Appeal to have referred to "payments of commission to brokers . . . not *bonâ fide* payments for work and labour done—that they were not payments in the ordinary way of business, but rather in the nature of bribes." . . . "In any case, when it is made out that the services of the broker are reasonably necessary, that the brokers are properly employed in the issue of the capital of the Company, and that the payment of a commission of so much per share is a fair and just repayment for services rendered, there is no ground, either of reason, of justice, or of principle, why the payment shall

not be held to be *intra vires* and unimpeachable."—*Metropolitan Coal Consumers' Association v. Scrimgeour* [1895], 2 Q.B. 609.

Section 89, Sub-section (3), of the Companies (Consolidation) Act, 1908, gives a statutory sanction to this decision of the Court of Appeal.

The Companies (Consolidation) Act, 1908, has made it lawful for a Company to pay commission to any person in consideration of his subscribing, or agreeing to subscribe, whether absolutely or conditionally, for any of its shares, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for shares, if the payment of the commission and the amount or rate per cent. of the commission paid, or agreed to be paid, are respectively authorized by the Articles of Association and disclosed in the Prospectus, in the case of shares offered to the public for subscription, and the commission paid or agreed to be paid does not exceed the amount or rate authorized.

When shares are not offered to the public for subscription, the regulations in Section 80, Sub-section (1) (b), apply.

Should an Auditor find a payment or charge of this nature in the Revenue Account, he should ascertain that it is authorized as above indicated, and subject to this a Company is not allowed to apply any of its shares or capital money in payment of any commission, discount, or allowance to any person for the above purpose, whether the shares or money are applied by being added to the purchase money of any property acquired by the Company or to the contract price of any work to be executed for the Company, or the money be paid out of the nominal purchase money or contract price or otherwise.

The expenses incurred in the formation of a Company are usually brought together into what is known among Accountants as a Suspense Account called "Preliminary Expenses," and as it would be unfair towards the business of the first year to charge the whole amount against its Revenue Account it is the custom to write off a proportion, such as one-fifth, against the Revenue Account of the first five years,

Amount
written off
Preliminary
Expenses.

at the end of which time this Suspense Account would thus be extinguished.

This method of dealing with the Preliminary Expenses Account is frequently provided for in the special Act or the Memorandum and Articles of Association, but even when this has not been done it may be permitted by the Auditor, provided the shareholders are made aware of the fact, either on the face of the Accounts, or by means of the Auditor's Report. The practice of spreading expenditure of a special or exceptional nature over a term of years is recognized as admissible among business men, and may be so recognized in the Accounts of Companies. "These Companies are commercial partnerships, and are, in the absence of express provisions, statutory or otherwise, subject to the same considerations."—*Griffith v. Paget*, 6 Ch. D. 515.

The only case dealing directly with this subject is one tried in 1864, in which an action was brought by a shareholder against two Directors, the Solicitor, and one of the Auditors of a Company registered under the Joint Stock Companies Act, 1856, Section 71 of which recognized the distribution of certain items of expenditure over several years for false representations in a Balance Sheet, one of such representations being that only a portion of the "Preliminary Expenses" was brought into the year's account.

The second Auditor had resigned after the declaration of a dividend which, in his opinion, had not been earned, and he was not made a defendant. In his opinion there had been a loss, apart from the question of how the preliminary expenses ought to have been treated in the account, and he had concurred with the other Auditor in addressing a report to the Directors suggesting that the meeting should fix upon such sum as it might consider fairly chargeable to the Preliminary Expenses Account, and that it be written from off that account at the rate of from ten to twenty per cent. per annum.

While he was being examined as to the manner in which the preliminary expenses had been dealt with in the Directors' Balance Sheet, which spread them over several years,

Martin, B., observed that he remembered the subject had been a good deal discussed as to Railway Companies some years previous, and there was a great objection to the course taken, "but now it appeared that there was an agreement among Auditors to spread such expenses over a number of years; that, indeed, was objected to, and it was the reason why the North-Western Railway Company were able to declare large dividends soon after they opened their line. But no doubt it was now done, and it would never do to impute it to the Directors as a fraud that they had done what was usually done by Auditors."

After these remarks by the Judge, Counsel then abandoned this part of his contention.—*Bale v. Cleland*, IV, F. & F. 117.

The number of years over which the "Preliminary Expenses" Account may extend should not exceed five or six, except in very special cases, for which ten should be the extreme limit, and the Auditor should not pass without comment any amount expended on "Preliminary Expenses" in excess of the amount stated in the Prospectus as being either the exact amount or the estimated amount, except that it is not necessary to disclose either of these amounts in a Prospectus published more than one year after the date at which the Company became entitled to commence business.

It is the custom with many Companies to place the "Interest paid to the Shareholders" in the Revenue Account,

Interest paid among the expenditure. This is very incorrect, to and should be objected to by the Auditor.

Shareholders. The Revenue Account should show clearly the actual or net profit out of which a dividend can be paid, or, if no profit has been earned, the fact should be distinctly shown.

If, notwithstanding that a loss has been sustained during the period to which the Accounts refer, a dividend be paid to the shareholders, the Revenue Account should show at a glance that it is paid either out of past profits or that its payment creates or adds to a previous deficiency, in other words, is paid out of the shareholders' capital.

In order that these facts may be properly set forth, the

Revenue Account should be divided into two sections, the first (which may be subdivided as previously suggested) consisting exclusively of the actual income and expenditure of the period under audit, the balance of which, showing the net profit earned or the actual loss sustained, should be carried down to the second part of the Revenue Account.

Revenue
Account should
be divided into
two sections.

In this second part should also be set forth the balance brought forward from the previous Revenue Account (if any), representing the undivided profits or the deficiency at that date, also the amount of the interest or dividend proposed to be paid to the shareholders. Any interim dividend paid to the shareholders since the last Accounts were made up, and any bonus proposed to be distributed among the shareholders, should be entered in the second part of the Revenue Account, which should also include any additions made to the Reserve or Reserve Fund (if any) during the period.

This supplementary statement, therefore, shows clearly out of what funds the proposed dividend would have to be paid, whether out of the profits of the period, or partly or wholly out of the past profits, or partly or wholly out of the capital of the Company.

The holders of preference shares, the dividends on which are "dependent upon the profits of the particular year only," are entitled to a dividend out of the profits of any year after setting aside a proportionate amount for depreciation, maintenance, repairs, and renewals for that year only, and are not to be deprived of that dividend in order to make good any sums which in previous years should have been set aside by the Company for maintenance, but which had been improperly applied by them in paying dividends.—*Dent v. London Tramways Company* [1879], 16 Ch. D. 344.

Dividends on
Preference
Shares.

When the Memorandum of Association of a Company incorporated under the Companies Act, 1862, stated that a portion of the shares were to have a right of receiving a dividend by preference to the other shares, resolutions passed

by the Company altering the priorities and payments of the net revenue as between the preference and ordinary shareholders were held to be not valid, and that no resolution of the Company, special or otherwise, could alter the contract made between the Company and all the shareholders, and that the revenue of the Company available for dividend must be applied in the manner originally prescribed by the Memorandum of Association.—*Ashbury v. Watson*, 28 Ch. D. 56, and 30 Ch. D. 376.

The Memorandum of Association of a Company contained this clause: "The capital of the Company is £150,000, divided into 10,000 ordinary shares of £10 each, and 5,000 preference shares of £10 each. The holders of preference shares shall be entitled out of the net profits of each year to a preference dividend at the rate of £10 per cent per annum on the amount for the time being paid or deemed to be paid up thereon. After payment of such preferential dividend, the holders of ordinary shares shall be entitled to a like dividend at the rate of £10 per cent per annum on the amount paid on such ordinary shares. Subject as aforesaid, the preference and ordinary shares shall rank equally for dividend." It was held that the preference shareholders were not entitled to a cumulative dividend of £10 per cent so as to have the deficiency in one year paid out of the profits of a subsequent year before paying anything to the ordinary shareholders.—*Staples v. Eastman Photographic Materials Co., Ltd.* [1896], 2 Ch. 303.

The income side of the Revenue or Profit and Loss Account contains the amount of the revenue derived from the business for carrying on which the Company or partnership was established, together with that of any additional and incidental income.

With the exception of interest accrued on investments or loans there should only be included among the revenue that which has either been received or is expected to be realized from completed transactions. In the case of sales, for example, the property in the goods sold must have passed from the seller to the buyer, otherwise the profit on the transaction

belongs to the period after the date up to which the Revenue Account is made up, which date coincides with that of the Balance Sheet.

In trading concerns the principal source of revenue consists of that derived from sales, which may be classed under three heads—

Sales.

- (1) Sales for cash.
- (2) Sales on credit, paid before the closing of the books.
- (3) Sales on credit, unpaid at the date of the closing of the books.

The first two items do not require any comment, but the third demands the most careful consideration of the Auditor. In the first place he must be satisfied that the sales taken credit for are *bonâ fide* sales, and that the goods are not subject to return at the option of the purchaser ; it is also in respect of goods sold and not paid for that bad debts arise. The best way of ascertaining how much should be charged against the Revenue Account, to provide for the probable failure of some of the debtors of the concern to meet their engagements, has already been shown, and it is only necessary to add that the sum decided upon should always be entered on the debit side of the Revenue Account, and never be deducted from the amount of the sales. In other words, the amounts debited to customers for goods sold to them must be set forth in full in one sum on the income side of the Revenue Account, while any bad debts or losses expected to arise on the realization of the balances must be distinctly stated on the other side of the Account.

It will be noticed that "Sales for future delivery" have not been included as a fourth source of revenue. Even although there may be a binding contract for sale and acceptance of goods at a future date, it cannot be considered sound finance to take credit for the profit on the transaction, except for the period during which the delivery of the goods takes place.

If the Directors of a Company persist in taking credit for sales of this nature, and do not make it quite clear on the face of a published Revenue Account that they have

done so, it is the duty of the Auditor to call attention to the fact in his Report.

In the case of concerns whose business is divided into departments, and where some departments manufacture goods which are passed on and charged to other departments, with a certain amount added on for profit of manufacture, it is sometimes difficult to arrive at the amount for which the concern should take credit in its final Revenue Account in respect of these inter-departmental profits. In those cases where the goods have been completed and sold there can be no question, but where the goods are taken into stock, either in a completed or partly completed state, difficulty arises. It is sometimes argued that if the goods which are manufactured in one department and passed on to another were purchased from an outside house, the concern would be entitled to take them into stock at cost price; and that therefore, since it manufactures these goods in one of its departments and passes them on, thus saving the profit it would have had to pay by purchasing the manufactured article, it ought to be entitled to take full credit in its Revenue Account for such profit.

When this method of treating the Accounts is insisted upon by the Directors of a Company, it is exceedingly difficult for an Auditor to object, although he may contend that until the goods have been actually sold no profit ought to be taken credit for. Provided, therefore, he is satisfied that only sufficient goods are produced in these sub-departments as would ordinarily be in stock, were the goods purchased from outside, it does not appear that he can reasonably object to departmental profits of this nature being taken credit for in the stock-taking. In certain cases it may, however, be advisable for him in his report to the shareholders to state that the profit includes the departmental profits created in the manner described, should the Revenue Account not disclose the fact.

The value of any goods returned by purchasers should be deducted from the sales, but this is the only exception; the total amount, therefore, of the sales, after deducting the

value of the goods returned, should be brought into the income side of the Revenue Account, while all charges and expenses connected with influencing such sales should be set forth on the debit side. In no other way can the shareholders see the total amount of the business done, and the expenses incurred in transacting it.

**Returned
Goods.**

The principal source of income of all Companies transacting insurance business, whether life, fire, marine, accident, guarantee, burglary, etc., is the premiums they receive for undertaking the risk of the insurance.

Premiums.

In auditing the Revenue Account of an Insurance Company the Auditor must be careful that only those premiums are taken credit for which fall due in the period under audit. Premiums paid in advance falling due after the date of closing the books should not be taken credit for, but they should be brought into the Balance Sheet among the liabilities, and would form part of the income in the following Revenue Account.

It therefore follows that Premiums received during the period under audit, but which fell due previously, should not be included, as they naturally belong to the preceding period. In the event, however, of their not having then been taken credit for, they should be added to the amount of funds at the beginning of the year, with a note explaining their previous omission.

The Auditor must satisfy himself that the requirements contained in the Notes at the foot of the various Forms, A to E, in the first Schedule to the Assurance Companies Act, 1909, and those contained in Notes 1 to 4, at the foot of the Balance Sheet, or third Schedule to the same Act, have been complied with.

When part of a Premium is allowed to remain on credit the whole premium should be included among the income, and the part not paid should be included among the assets, under the heading "Loans on Company's Policies."

Under the heading of "Shares in other Companies," or

some such similar heading, is frequently included, in the case of Financial and Trust Companies, the amount they wish to take credit for in respect of shares of other Companies received by them, either as promoters or underwriters, or perhaps as bonuses in consideration of their having subscribed for shares in new undertakings.

Shares in other
Companies.

The income of a Company of this nature consists partly of cash received direct, partly of cash the result of realization of shares, and partly of an estimated value placed upon the shares acquired but not disposed of at the date of the Balance Sheet.

The amount taken credit for in respect of the shares is sometimes the total nominal amount of the shares, or this amount subject to an allowance for the possible loss on realization. Whatever the amount may be, it requires thorough investigation by the Auditor for him to arrive as a matter of principle at the correct sum which he can pass without making any special reference to it in his Certificate or Report. In nearly all these cases the Articles of Association allow a Company to purchase property for speculative purposes, and to resell it to other Companies formed for the purpose of acquiring it, the vendor Company receiving either cash or shares, or partly cash and partly shares.

If the Articles do not sanction this, then the whole transaction is *ultra vires*, and should be reported upon by the Auditor; but, assuming the requisite authority is in the Articles, then the amount to be taken credit for requires his attention.

In the case of cash there is very little doubt. The whole of the cash received after allowing for the expenses may be taken to credit of Revenue Account without any other deduction, but in the case of shares several matters have to be considered. A sale of land for shares is, in law, not a sale at all, but an exchange, and the Company has only as the result one class of property, namely, shares, in lieu of another class of property, namely, land; but although the question has never come before the Courts, it seems to be assumed that shares acquired in this way can for certain purposes be treated

as profits. It is, however, distinctly dangerous for any amount taken credit for in a Revenue Account in respect of shares to be treated as a profit available for dividend, and it is now the usual practice, in the case of a Company whose revenue is derived by means of receiving fully-paid shares to be ultimately converted into cash, for the Revenue Account to be prepared in two columns, one showing the profit in shares, and the other the profit or loss, as the case may be, in cash, and not to treat as divisible profit anything taken to credit in the share column until the same has been realized.

The interest and dividends received on the investments of a Company, so far as they relate to the period since the date on which the books were last closed, or, **Interest on Investments.** if the Company be a new one, since its incorporation, may be taken credit for in the Revenue Account, and, in addition, the interest accrued to the date of closing the books.

For example, supposing the books are made up at the 31st December, and one of the Company's investments is Consols, the dividends on which are paid on the 5th April and 5th October in each year, the proportion of interest for the period between the 5th October and the 31st December may be taken credit for, supposing the investment to have been made prior to the 6th October, otherwise the proportion can only be taken credit for.

When the shares of another Company are held as an investment, the accrued dividend can only be estimated, as the rate which will subsequently be declared cannot be known. The Auditor must, however, not allow too sanguine an estimate to be assumed.

The interest derived from investments in debentures of a Company, or from mortgages, being fixed, the calculations can be easily made.

The rate at which Income Tax should be **Income Tax on Investments.** deducted from the several classes of payments liable to deduction was dealt with in a Memorandum issued by the Board of Inland Revenue, dated 15th May, 1904, of which the following is the substance:

Income Tax is deductible at the rate of d. in the pound, in respect of—

(a) Dividends and interest from the public funds payable on or after April 6th, 19 .

(b) Dividends and interest of foreign or Colonial Government Securities, or of foreign or Colonial Companies entrusted to an agent in this country for payment here on or after April 6th, 19 ; also of like dividends or interest which although not entrusted to an agent in this country for payment, are realized in the United Kingdom on or after that date through bankers, coupon dealers, or other persons.

(c) Interest and annuities paid by municipal Corporations or other local authorities to creditors on rates.

(d) Interest and annuities not paid or not wholly paid out of profits and gains brought into charge to Income Tax.

But in respect of—

(a) Ground-rents, etc., secured on property charged with Income Tax,

(b) Interest or annuities wholly payable out of property, profits or gains charged with Income Tax,

(c) Dividends out of the profits or gains of public Companies in the United Kingdom.

the tax is deductible at the rate or rates in force during the period in which the same has or have been accruing, i.e. in respect of any portion which accrued in the year ended 5th April, 19 , at the rate of d. in the pound, and in respect of any portion accruing subsequent to that date at the rate of d. in the pound.

Another source of revenue in nearly all Companies is the fees received for the registration of the transfer of shares, usually called "Transfer Fees." In those Companies whose shares are not quoted in the official list of the Stock Exchange the income received from this source is generally trifling, but in the case of Companies in whose shares there is constant speculation, the transfer fees often form an appreciable item of revenue.

To ascertain that the Company has received all the transfer

fees to which it is entitled, the Register of Transfers should be inspected, and if necessary the transfers themselves should be counted.

Although not falling within the province of Auditors to check share transfer deeds with the share certificates, yet it is now a common practice for Auditors to be paid a special fee for performing this duty before the transfers are placed before the Board and the new certificates issued. The following method of checking may be followed—

**Periodical Audit
of Share
Transfers.**

Ascertain that all transferors have been notified of the lodgment of transfers, and inquire what (if any) objections have been received. Compare the signatures of the transferors with their signatures on deeds acquiring their shares (such as transfers or application forms, as the case may be), or, if acquired as executors or administrators, compare with specimen signatures (if obtained by the Company) at time of registration. See that all transfer deeds are in order, and *primâ facie* duly executed and duly stamped according to the consideration therein stated. Compare the consecutive numbers of the shares referred to in the transfer deeds with the numbers on the share certificates lodged against them, and in cases where a part only of the holding is transferred, see that the consecutive numbers on the "Balance Certificate" agree with those representing the untransferred portion disclosed on the transferor's certificate. Ascertain that the entries in the Register of Transfers are in accordance with the transfer deeds. Cancel all certificates lodged against transfers, and see that the new certificates issued bear the consecutive numbers of the same shares, and of those shares only, that the new certificates for shares transferred are in the names of the respective transferees, and that the new Balance Certificates are in the names of the transferors, also that the particulars in the certificates agree with those on the counterfoils of the Certificate Books and the Balance Receipt Book. At the Auditor's next attendance, after having ascertained that the Board Minute Book contains resolutions authorizing the registration of all transfers

previously dealt with by him, he should check the postings from the Register of Transfers into the Share Ledger.

The above system of checking assumes that it is the practice at each Board Meeting to draw Balance Certificates in respect of all untransferred shares represented by the certificates deposited, whether such shares have been certified or not. In cases where this method is not adopted, but where it is the practice to exhaust only partially the shares on the cancelled certificate at one meeting, and to produce the same certificate against further transfers at a subsequent meeting, it is most essential that care should be taken by the Auditor to mark the cancelled certificate in such a manner as to show exactly how many shares thereon have been dealt with, also their consecutive numbers. A convenient method of doing this is to enter on the back of the cancelled certificate the number of shares transferred, with their consecutive numbers, together with the name of the transferee appearing on each transfer lodged for registration against such certificate, and to initial each entry. A similar entry should be made in respect of any ultimate balance drawn. Shares in respect of which no entry has been made will be the balance undisposed of on the cancelled certificate.

The revenues of Railway, Tramway, Omnibus, and similar Companies consist mainly of receipts for the conveyance of passengers and goods. Banks and Discount
Traffic and other Receipts. Companies derive theirs principally from lending to customers, or to stockbrokers or from discounting mercantile bills; Gas, Electric Lighting and Waterworks Companies from the rates they charge for the consumption of their respective supplies. These demand no special directions for the guidance of the Auditor. He must naturally be careful to ascertain that no amounts are taken credit for which have not been properly earned, and that when it is necessary to make an estimate it is done on a reasonable and moderate basis.

When income is derived from the sale of goods on the hire-purchase system, it must be borne in mind that the property in the goods does not pass to the hirer until the agreed

number of instalments of principal and interest have been paid. The Revenue Account should consequently only be credited with the proper proportion of the instalments which have accrued at the date up to which it is prepared, and if at the time of audit any of such instalments are in arrear, the Auditor must inquire into the probability of their being recovered, in the same way as he deals with the amounts due from debtors.

**Hire-Purchase
Receipts.**

When currency is remitted home, or when floating assets are kept abroad, there will either be a profit or a loss on closing the books. For remittances home, the amount of currency remitted being known, any difference between the rate at which the currency stood in the books and the rate at which it was remitted home would have to be carried to the Exchange Account and eventually to the Profit and Loss Account. Floating assets would have to be converted from currency to sterling at the rate of the date of the Balance Sheet, and the difference, representing a gain or a loss, would be brought into the Profit and Loss Account.

Exchange.

When a Company carrying on a successful business requires additional capital for the purpose of extending its transactions, it is a very general practice to issue the new shares at a premium.

**Premiums on
Shares.**

There are many reasons for this, one being that when the market value of the shares of a Company is above par it would depreciate this value were the new shares issued below it. Another reason is, that it would not be fair to the shareholders, who have borne the risk of establishing and bringing the Company to its flourishing condition, for others to come in and share their reward without giving them some equivalent for the privilege.

**Should not be
brought into
Revenue
Account.**

It is not desirable for these premiums to be taken credit for in the Revenue Account, as they should be invested and placed to the credit of the "Reserve Fund," or, if there be none, should form the commencement of one. The amount may, however, with great propriety, be applied towards

the liquidation of an unrealizable Account on the credit side of the Balance Sheet, such as that of "Preliminary Expenses," but should the Directors insist on treating these premiums as Revenue and available for dividend purposes, the Auditor has no authority for declining to pass Accounts with these receipts thus treated, unless it is forbidden by the Articles of Association.

Early in this chapter it was pointed out that the debit side of the Revenue or Profit and Loss Account of a trading concern commenced with the stock in hand at the beginning of the period, and consequently the credit side includes the stock left in the possession of the concern at the date on which the books are closed, that is, the unsold portion of the purchases of the period, and perhaps some of the stock in hand at the commencement of the period.

Stock in hand
at end of
period.

The amount to be taken credit for in respect of stock is of supreme importance in many Companies, as it is no exaggeration to state that it is frequently possible to double or treble the apparent profit, where the Directors and Manager together, or even the latter alone without the knowledge of the former, succeed in deceiving the Auditor, and consequently the shareholders.

The Auditor, naturally, is not responsible for the value assigned to this stock, as it is manifestly impossible that he should, even if he were qualified, be able to take or to check the actual measurement or counting of stocks, whether of raw materials or manufactured articles, either by number, weight, or otherwise, but he must use reasonable discretion when the valuation of the stock is handed to him, in satisfying himself that it has been arrived at in a systematic manner.

Method of
checking
value of
Stock.

As regards prices, it is desirable to verify those at which raw material is taken credit for by an examination of some of the invoices; and also, where the Auditor is in doubt as to these values, to consult some prices current, in order to see how far they correspond with the value on the sheets shown

to him. As regards the valuation of the manufactured and partially manufactured stock, it is possible in some cases to test the calculations by which the cost of production per unit is made out by the manufacturer. In other cases, where this is from the nature of the circumstances impossible, an approximate cost may be ascertained, by the deduction of a percentage from the selling prices, bearing the same ratio thereto that the gross profit in previous years has borne to the total production or turnover of the business. In some cases it is desirable to ascertain whether much of the stock has been on hand for a long period ; as it may lead the Auditor to form the opinion that the price taken credit for should be reduced, either owing to depreciation in the goods themselves, or to the inability of the manufacturer to sell at former prices.

Some businesses admit of a mechanical method of approximately checking the quantities of the total stock, which may usefully be employed by an Auditor. For example, in the case of a concern occupied in manufacturing bags for grain, etc., or other products from raw jute, the total consumption of raw material can be ascertained by adding to the raw stock at the commencement of the year the cargoes of jute delivered, and deducting therefrom the unmanufactured jute lying in the warehouse at the end of the year. This will show how many tons have been consumed, and give the product in a certain number of bags or yards of the manufactured article. This result should be accounted for (within a small limit of deviation) by the total sales in quantities, added to the stock of the manufactured goods at the end of the period, after deducting the corresponding stock at the commencement of the period. This method is applicable to very many other varieties of manufactures, where but one or few varieties of raw material are used ; but it cannot be applied successfully to those in which many materials are used in completing the finished article.

It is clearly, however, not incumbent on an Auditor to check the valuation of the stock handed to him by the officials of a Company, in this or any similar searching manner ; he

should, however, require the valuation of the stock to be certified, both as to measurement and weight, as to the value put opposite each article, and as to the working out of the necessary calculations and the additions, by the officials who have respectively performed these duties.

Auditor should
require Certifi-
cate of value
of Stock.

As already stated, the Accounts of a Company are prepared by the Directors, who have funds at their disposal to employ Valuers, or any other experts, to assist them in arriving at the value of stock-in-trade before handing the Accounts to the Auditors for their approval, while an Auditor has no power to employ a Valuer or have any assistance whatever at the expense of the Company in checking the value put upon the stock by the Directors.

"It is no part of an Auditor's duty to take stock. No one contends that it is. He must rely on other people for details of the stock-in-trade on hand. In the case of a cotton mill he must rely on some skilled person for the materials necessary to enable him to enter the stock-in-trade at its proper value in the Balance Sheet."—*In re Kingston Cotton Mill Company* (No. 2) [1896], 2 Ch. 279.

In different trades the mode of procedure in taking the stock naturally varies; but the object of stock-taking is to ascertain, by number, quantity, measurement, or weight, the entire stock-in-trade, that is, the unsold portion of goods, either manufactured or purchased with the object of being resold in the ordinary course of business.

When the Directors take credit in the Revenue Account for an increase in the value of any property over the amount

Writing up. this same property was taken credit for in the preceding Balance Sheet, or what is technically known as "writing-up" an Asset, the Auditor, however much he may disapprove of the step, has no legal power to object, provided he is satisfied it is done in a *bonâ fide* manner and that the fact is disclosed on the face of the Revenue Account. It is also more correct to take credit for doubtful revenue, and to add a corresponding amount to reserve on the debit side, than to omit the doubtful item, when there appears

to be any reasonable chance of the whole, or even part, being realized.

When the profits are not sufficiently large to admit of a dividend being paid out of them, and the Directors in distributing one have recourse to the Reserve or "Reserve Fund," the amount taken therefrom should not be included among the income shown in the Revenue Account.

As previously remarked, this Statement should show the actual profit or loss of the period, and it would not do so if amounts of this description were improperly added to the income instead of being brought into the supplementary Statement previously explained and recommended.

The final balance of the Revenue Account, representing the amount of undivided profits, or the deficiency resulting from either mismanagement or misfortune, is transferred to the Balance Sheet, where it remains, showing, in conjunction with the other entries therein, the financial position of the concern, so far as the books are concerned.

CHAPTER XI

THE BALANCE SHEET—DEBIT SIDE

EXPLANATION of the Balance Sheet—Not necessarily a Statement of Assets and Liabilities—A Full and Fair Balance Sheet—Liabilities—Capital—Preferred Shares—Shares Issued at a Discount—Shares Issued as Fully Paid—Audit of Capital Account—Debentures—Mortgages—Liability on Bills Receivable Discounted—Sundry Creditors—Interest Outstanding—Amounts Due on Current and Deposit Accounts—Claims Admitted but not Paid—Reserve—Reserve Fund—Secret Reserves—Sinking Fund—Balance of Revenue Account (Surplus)

THE Balance Sheet is the most important Statement which can be laid either before the Shareholders of a Company or before those interested in any commercial

Definition of
Balance Sheet.

or financial adventure, whether speculative or non-speculative, as it shows the financial position of the Company, partners, or individual, as the case may be, as ascertained from the Books of Account. The words "as ascertained from the Books of Account" are used advisedly and must be borne in mind in perusing the following pages, as a Balance Sheet is not necessarily, or, in fact, usually,

Not a State-
ment of Assets
and Liabilities.

what so many believe—or to suit their purposes pretend to believe—a Statement of Liabilities and Assets, using the latter word in the sense of its representing the saleable or market value of each heading or item which appears thereon.

A Balance Sheet is simply what its name implies, a sheet or collection of balances, and is really a Statement in an abstract form of the debit balances and the credit balances of the Ledger or Ledgers, after the elimination of such balances as have been transferred to the Revenue or Profit and Loss Account.

The erroneous idea that a Balance Sheet is necessarily a Statement of Liabilities and Assets probably arose from the fact that, as a matter of book-keeping, the credit balances of the Ledger which are transferred to the debit side of the Balance Sheet must necessarily include all the liabilities, while in the same manner the debit balances, being transferred to the credit side of the Balance Sheet, must necessarily

include the assets. The fallacy, however, of the popular title is easily seen when attention is called to the fact that the credit side of the Balance Sheet must also by the same process include all expenditure unrepresented by an asset or any property of value, also all special losses, and the general loss or deficiency to date brought forward from the Profit and Loss Account; while, on the other hand, the debit side necessarily includes the Capital of the Company or partners, also any reserve, and any surplus brought from the Profit and Loss Account.

“Directors may honestly and properly prepare a Balance Sheet, showing or implying a loss of capital, and at the same time may honestly and properly prepare a Loss and Profit Account, showing a balance available for dividend.”—*In re Barrow Haematite Steel Co.* [1900], 2 Ch. 857.

Having stated these facts it must not be understood that the Auditor's duty is confined to ascertaining that the items on both sides of a Balance Sheet simply agree with the Ledger Accounts. In those cases where the balances on the credit side of the Balance Sheet represent what are known as assets, or property, it is now generally admitted to be his duty to inquire into what has been inserted in this Statement as representing the value of such assets or property, while, on the other hand, he has to use reasonable care to satisfy himself that any liabilities not brought into the Books of Account are included in the debit side.

When the word “value” is used in connection with the amount placed against any item on the credit side of a Balance Sheet, it must not be understood to represent what that item would realize if offered for sale in an open market. It represents what that item is believed to be worth to the concern or individual owning it, having regard to the fact that the owner is what is technically known as a “going concern.”

For example, suppose a Company, firm, or individual decides to erect a factory, selects as an eligible site a plot of freehold land near a railway station and after negotiation the site is acquired, naturally at a somewhat higher price than the surrounding land, having regard to the fact that it was a

small portion specially selected out of a larger area belonging to the vendor. Having acquired the land the purchaser instructs an architect to prepare plans for the building, calls for tenders for construction of the factory and eventually has the factory built by a contractor. In the meantime designs and estimates are obtained from engineers for the particular class of machinery to be erected in the factory which after being specially made is installed. A large quantity of belting, workmen's tools and other sundries are necessarily purchased, and the factory commences operations.

In making up the Accounts for the first financial period, say about twelve or fifteen months after the commencement of business, the Directors of the Company or the partners of a firm, or the individual owning the concern, as the case may be, have to determine on the amount to be placed on the credit side of the Balance Sheet in respect of the land, the building, the plant and machinery, the belting, the furniture, fittings, and the loose tools of the workmen.

According to some of the theorists the only value to be placed on these items is the value the various classes of property would fetch in the open market. This would have the result of the land being valued as a small holding, the only purchaser of which, if offered for sale, would probably be the original vendor, who would be able to acquire it at a depreciated value. The building, which would probably be useless except as a factory, and, even if purchased as a factory, would have to be again refitted for manufacturing some other class of goods, or might have to be adapted for some totally different purpose, or perhaps even pulled down and the materials disposed of as second-hand building material, could only be valued at a much lower rate than the original cost. The plant and machinery, having regard to its position and the fact of its having been used, would certainly not be valued at above 50 per cent. of its cost, and under certain circumstances might only be valued as scrap iron; while the furniture would undoubtedly be subject to very heavy depreciation, as likewise the workmen's tools.

In other words, even taking a much more sanguine view

of the valuation, a valuation on the basis of the theorists would necessarily be a very low one, and that value inserted in the Balance Sheet would probably show the concern insolvent on the preparation of its first Accounts.

On the other hand, if the anticipations of those who purchased the land, erected and fitted up the factory, have been fulfilled and the concern is likely to continue, the practice of preparing a Balance Sheet is to treat this property as being worth their cost price only subject to a certain allowance for what is known as "depreciation," which is discussed elsewhere.

In other words, the value placed upon the property and the assets generally is the value of what it is worth to a "going concern" and has no relation whatever to current or market values. Common sense must support this view and treat the theory of having assets at their actual value on the credit side of a Balance Sheet as impracticable.

An Auditor has occasionally to certify that a Balance Sheet is "full and fair." It is difficult to define what a "full" Balance Sheet means, as how can any statement which is necessarily an abstract be correctly described as full? The following definition by the Court of Appeal may, however, be accepted as representing what professional Auditors have always considered the proper interpretation—

"A full and fair Balance Sheet must be such a Balance Sheet as to convey a truthful statement as to the Company's position. It must not conceal any known cause of weakness in the financial position, or suggest anything which cannot be supported as fairly correct in a business point of view."—*In re London and General Bank* (No. 2) [1895], 2 Ch. 692.

In finally settling the Balance Sheet of a Company for submission to the Auditor, it must not be overlooked that, while it would be very improper for the Directors intentionally to deceive their co-partners, the shareholders, in any particular, by unduly inflating the amount placed against the items on the credit side of the Balance Sheet, or under-rating the liabilities, yet in many instances it would be very

unfair to themselves and to the shareholders, as well as very impolitic, either to overstate the liabilities or to under-estimate the assets.

This applies to Companies whose business depends on their periodically showing to their constituents and the public their sound and unquestionable financial position, for while, on the one hand, nothing could be more reprehensible than for the Directors of a Bank to deceive their shareholders and the customers, by stating its securities at a value they know they do not possess, yet they would naturally, as competitors for public patronage, desire to set forth the assets at their full market value, and to this the Auditor cannot raise any objection. As a matter of prudence, however, he might suggest the cost price being inserted in the Balance Sheet, supposing the securities have not depreciated in value, and there being stated, in a foot-note, the actual market value at the date on which the Balance Sheet is made out.

The liabilities as shown in a Company's Balance Sheet may be classed under two heads :

Liabilities.

- (1) Liabilities to the shareholders.
- (2) Liabilities to the public.

In the case of a firm or individual, the classification would be—

- (1) Liability of the business to the partners of the firm or to the individual owning the business.
- (2) Liabilities to the public.

In the latter case, the liability of the business to the partners or individual would be the amount standing to the credit of the partners or individual on their capital and loan accounts after deducting the amount at the debit of their drawing Accounts, while in the case of a Company, the liabilities to

the shareholders consist of the capital, which may be represented either by stock or shares.

Capital.

If the latter, the shares may be either all of one equal value, or some may be of larger amount than others. Again, the shares may either entitle their holders to receive an equal share of the profits, or some of them may confer the right to

a preferential dividend, either at the same rate of interest, or perhaps at a higher or a lower rate than the "ordinary" shares, the former being known by that name, the latter being usually styled "preference" shares.

There are two classes of "preference" shares, one which entitles their holders to a preferential dividend out of the profits of the year only, the other which claims the preferential dividend out of the profits of preceding or future years, in the event of the profits of any one year not being sufficient to provide for the stipulated interest.

**Preference
Shares.**

Unless, however, it is expressly prohibited by the private Act or Articles of Association, preference shareholders are entitled to the preferential dividend out of any profits available for the payment of dividends.

The details, showing the particulars of the capital, should be clearly stated, and when it is divided into more than one class of shares this should be shown, also the number of shares authorized to be issued either by the special Act of Parliament or the Memorandum of Association, the number actually issued, the total nominal value of the shares issued, and the amount paid up. Any sums paid in advance of calls should also be stated.

**Details of the
Capital should
be set out.**

When a Company has paid interest on any of its share capital, as sanctioned by the Board of Trade in accordance with the Companies (Consolidation) Act, 1908, Section 91, which authorizes interest to be paid on shares issued for the purpose of raising money to defray the expenses of the construction of any works or buildings, or the provision of any plant which cannot be made profitable for a lengthened period, Sub-section (7) of this section requires that the Balance Sheet shall show such capital separately, and the rate at which the interest has been paid out of capital during the period to which the Accounts relate.

The manner in which the amount representing the Shareholders' Capital has been arrived at requires investigation. A subscriber for shares practically enters into a contract

to take the shares and pay a proper consideration for them, either in money or money's worth. The Capital paid to the Company in money will be standing at the credit of the Ledger Account posted from the Cash Book, but it must not be taken as necessarily correct by the Auditor and passed without inquiry. Payment on shares made by a fictitious proceeding under which a Company never really receives the amount payable on the shares at all is invalid.—*Aspinall's Case; In re The Eupion Fuel and Gas Co.*, 36 L.T. 362; *Hay's Case*, 10 Ch. D. 593.

The Directors of a Company limited by shares may receive payment from a shareholder of any amounts remaining unpaid on his shares, and may pay out of capital interest on sums so paid up in advance of calls, either under Table A (if applicable), or under provisions to the same effect in the Articles of Association, provided they do so in good faith and in the honest exercise of the discretion confided to Directors.—*Lock v. Queensland Investment and Land Mortgage Co., Ltd.* [1896], A.C. 461.

Money thus paid in advance is not share capital, and should appear separately in the Balance Sheet. In a winding up it is entitled to be repaid before a return is made to shareholders on the amount called up.—*In re Wakefield Rolling Stock Company* [1892], 3 Ch. 165.

When shares have been forfeited in consequence of calls due thereon not having been paid, the Auditor should require proof that the registered holders have been duly served with the notice required by the Articles of Association, or other regulations of the Company. He should then satisfy himself that proper entries have been made, both in the financial and statistical books of the Company, regarding the forfeiture.

Forfeited
Shares.

The amount standing to the credit of issued Capital on the debit side of the Balance Sheet should be reduced by the amount which stood to the credit of the forfeited shares, and this amount should be brought into a sub-heading of the Capital Account by itself, such as "Amount paid on shares forfeited."

Should these shares be reissued, which may be done at a discount not exceeding the amount already received from the original holders of the shares, they may be restored to their original position in the Balance Sheet, as if no forfeiture had ever occurred. Should any profit be derived from the forfeiture and reissue, it may be treated as a premium on issue of shares and added to the Reserve, if any, or even taken to credit in the Revenue Account, unless otherwise prescribed by the Articles of Association.

A Company governed by the Companies Clauses Consolidation Act, 1845, and the Acts amending it, may issue fully paid-up original stock at a discount, and for payment either in cash, or for land or labour, or other consideration, subject to the liability of the Directors for issuing the stock below its value without necessity. Such Companies may also issue debentures or debenture stock at a discount, if authorized to borrow money or raise money by mortgages or debentures.—*Webb v. Shropshire Railways Co.* [1893], 3 Ch. 307.

A Company governed by the same Acts may issue fully paid-up original shares at a sum less than their nominal amount in the same manner as new shares can under the authority of those Acts be issued.—*Statham v. Brighton Marine Palace and Pier Co.* [1899], 1 Ch. 199.

In a limited Company, notwithstanding the Articles of Association empower the Directors to issue shares at a discount, it is impossible for them to do so as to render the holders thereof not liable to pay the nominal amount thereof in full.—*In re Railway Time Tables Publishing Co., Ex parte Welton* [1895], 1 Ch. 255.

“The amount subscribed which is to make the shareholder a partner in the concern, must be paid, and by no expedient nor indirect arrangement can the Company evade the obligation of possessing the Capital which the Legislature has enjoined shall be the Capital upon which it is to trade. It has provided means by which the Capital shall be subscribed, and the partners compelled to pay what they,

by taking the shares, have agreed to pay."—*Randt Gold Mining Co. v. New Balkis Eersterling, Ltd.* [1903], 1 K.B. 465.

A Company limited by shares has no power to issue shares as fully paid up as a free gift, or bonus, to its shareholders, although a contract to do so has been made without any fraudulent intent, and registered.

Issue of Fully
Paid-up
Shares.

—*In re Eddystone Marine Insurance Co.* [1893],

3 Ch. D. 9.

It is therefore evident that where a Balance Sheet contains the entry of Capital issued either as fully paid up, or represented in any way except by cash received by the Company, the Auditor should satisfy himself that to the best of his knowledge and belief the issue of such Capital has been both proper and legal.

In auditing the first Accounts of a reconstructed Company, the Auditor should satisfy himself that the Capital of the new Company has been issued in accordance with the Agreements entered into relating to the reconstruction. If the issue has been in accordance with an Order of Court, an office copy of the Order should be produced to the Auditor.

The Capital of a limited Company may not be diminished by a surrender to it by shareholders of partly-paid shares, as such is a transaction of purchase and sale, the Company in effect purchasing the shares at the price of discharging the shareholders from their liability to calls, and such a transaction is bad under the decision in *Trevor v. Whitworth*, 12 App. Cas. 409.—*Bellerby v. Rowland & Marwood's Steamship Co., Ltd.* [1901], 2 Ch. 265.

Audit of
Capital
Account.

To audit thoroughly the Capital Account at the first audit of a Company, or at the audit after any subsequent issue of capital, the following course should be followed—

1. Check the Forms of Application for shares and Letters of Allotment with the Banker's Pass Book.
2. Check the Forms of Application and Letters of Allotment into the Application and Allotment Book.
3. Check the Application and Allotment Book into the Share Ledger.

4. Check the money paid according to the Application and Allotment Book into the Cash Book.

5. Repeat the same operation in respect of each Call.

6. Check the number of shares issued according to the Balance Sheet with the numbers stated to have been allotted at Board Meetings according to the Minute Book.

In addition to the stock or shares there is another class of Capital frequently made use of by Companies, technically known as "Debenture Capital." This, as **Debentures.** its name implies, is borrowed capital, the repayment of which may be secured to the lenders by a mortgage deed either on part or on the whole of the property of the Company.

No satisfactory definition of a debenture has so far been given. Chitty, J., discussed the term very fully in *Edmonds v. Blaina Furnaces Co.*, 36 Ch. D. 215, and stated, "The term itself imports a debt, an acknowledgment of a debt, and, speaking of the numerous and various forms of instruments which have been called debentures without anyone being able to say the term is incorrectly used, I find that, generally, if not always, the instrument imports an obligation or covenant to pay. This obligation or covenant is, in most cases at the present day, accompanied by some charge or security; so that there are debentures which are secured, and debentures which are not secured."

Mortgage debentures are debentures secured by a charge of some kind on the property of the Company, while ordinary debentures are merely certificates of indebtedness.

Railway debentures made in the form given in Schedule C of the Companies Clauses Consolidation Act, 1845, are only secured on the tolls and earnings of the Undertaking, and not on the capital, the permanent way, the rolling stock, or any part of the railway itself.

Debenture-holders are creditors of the Company, but the amount due to them should be kept distinct from the sums due to ordinary creditors. In a few Companies they have the privilege of voting at meetings, also of having their own Auditor.

Companies occasionally issue debentures at a discount. In such cases, as the liability is to pay back to the debenture-holders the nominal amount at some future date, however remote, the nominal amount of the debentures issued must be included on the debit side of the Balance Sheet, while the discount must be either charged against the Revenue Account of the period during which the debentures were issued, or, if not prohibited by the Memorandum and Articles of Association, be spread over a term of years, leaving the proportion not charged against Revenue on the credit side of the Balance Sheet.

Debentures
issued at a
Discount.

The Auditor of a Company which has issued debentures should satisfy himself that the debentures have been lawfully issued.

In October, 1904, a Company raised £50,000 by 5,000 £10 Income Bonds, repayable in seven years with a bonus of £25 exclusively out of the net profits from time to time of the Company. By the conditions the registered holders of these Bonds might exchange them for first Mortgage Debentures, but this was not to affect the bonus; by another condition the Company had the option at any time after December, 1906, of giving notice to pay off the Bonds, and six months afterwards the principal (if not converted) and the bonus were to become payable. In 1909, most of the Bonds had been converted into Debentures, leaving only the £25 bonus payable; no profits had been earned, but it was proposed to extinguish this £25 by the issue, in exchange for the bonus, of twenty fully paid-up new Shares of the nominal value of £1 each. An action having been brought to test the validity of this proposed issue of further capital—

It was held by the Court of Appeal that there was nothing in the Bond which authorized the Company to turn a contingent liability on income into a present liability payable out of capital; that the proposed arrangement with the Bondholders was equivalent to a payment of dividends out of capital and provided a means of issuing shares at a discount, for there was no consideration given to the Company for the issue of these new shares; and that on these grounds the arrangement

was *ultra vires* the Company and must be restrained.—*Bury v. Famatina Development Corporation, Limited* [1909], 1 Ch. 754.

The amount of the liability to those who have advanced money to the Company, secured by a mortgage on some or the whole of its property, should be included among the liabilities under a separate heading, such as “Amount due to Mortgagees.” The amount set out should be that of the sums actually advanced to the Company, together with any accrued or outstanding interest thereon, placed in a separate line. This interest, when secured by the Mortgage Deed, should not be included with amounts due to unsecured creditors.

There is nothing in the Companies Acts expressly or by necessary implication prohibiting a limited Company from mortgaging its unpaid capital; consequently, where power to mortgage future or unpaid-up capital is given by the Memorandum or Articles of Association, a mortgage of such is valid.—*In re Pyle Works*, 44 Ch. D. 534. This decision was approved by the Judicial Committee of the Privy Council on an appeal from the Supreme Court of New South Wales, the Companies Act being for this purpose identical with our Act of 1862, on the 6th March, 1895.—*Newton v. Debenture-holders, etc., of Anglo-Australian, etc., Company* [1895], A.C. 244. The Companies (Consolidation) Act, 1908, Section 93 (1) (b), implies that uncalled share capital can be mortgaged or charged.

When Bills of Exchange Receivable come into the possession of a Company from any of its debtors, they are either retained by the Company until they become due, or they are discounted and the proceeds made use of for business purposes.

In the latter case, should the acceptor of a bill become insolvent before it falls due, and, in consequence, it is not honoured on presentation, the discounteer will look to the Company to refund him the proceeds.

The Auditor should, therefore, go carefully through the list of the Bills Receivable which have been discounted, and upon

which the Company is liable, with the Manager or some other official, and endeavour by that means, or in any other way he may think advisable, to ascertain what sum may have ultimately to be provided by the Company. This amount should be carried out as a liability, from which there should first be deducted the estimated amount expected to be received from the acceptors.

In the event, however, of the Company becoming insolvent, it would not obtain possession of the bills, and therefore any amount received from the acceptors would be payable to the holder of the bills, and not to the Company.

Under "Sundry Creditors" or some similar heading should be included all the sums due to those creditors of the Company who are not mortgagees or debenture-holders and who do not hold security for the payment of the same. The amounts due to debenture-holders whether they do or do not possess security, and to mortgagees of the Company's property, should not, consequently, be included under this heading.

Sundry
Creditors.

It therefore follows that only the sums due to two classes of creditors can be here set out, namely, those on Bills of Exchange Payable, and those on open Accounts, and the amounts due to each class is usually stated.

Care should be taken by the Auditor to ensure that all of the latter class are included. It is not, however, the omission of the amounts due to those creditors who supply a concern with goods, which are either sold again or manufactured into other goods for resale, that he has to guard against; they are almost invariably entered in the books as soon as they reach the purchaser's premises. The difficulty is to ensure that among the liabilities under the above heading are included all the sums due to creditors chargeable against the Revenue Account, and which should be included in the expenses. The Accounts representing these are frequently not sent in until some time after the books are closed, and are, in consequence, omitted.

When a dividend is declared on the share capital of a Company it is the usual practice for the Board to draw a cheque

on the current account for the full amount, and to place it to the credit of a separate account at the Bankers. Interest warrants on the Bankers are then issued to the Shareholders' Interest Outstanding. shareholders for the amount of their respective shares of the dividend, which, on being paid, are charged against this separate account.

Owing, perhaps, to the absence of shareholders from the country, from carelessness, or from other causes, it almost invariably happens that some of these warrants are not presented for a considerable time, and occasionally never come in. In preparing the Balance Sheet the amount of these outstanding interest warrants should be placed on the debit side under "Shareholders' Interest Outstanding," or some similar heading, while the same amount, representing the balance of this separate account at the Bankers, should be added to the cash balance on the credit side of the Balance Sheet.

When a Company declares a dividend on its shares, a debt immediately becomes payable to each shareholder in respect of his dividend, for which he can sue at law, and the Statute of Limitations immediately begins to run. The declaration does not make the Company a trustee of the dividend for the shareholder, and an entry of the liability in the Company's books—at any rate when no special part of its assets is set aside as representing the dividend and no notice of the entry is given to the shareholders—does not take the case out of the statute. Being payments under the Articles of Association, dividends are specialty debts, and consequently the period of limitation is twenty years. *In re Drogheda Steam Packet Company* (1903), Ir. R. 512. The same principle was asserted in *In re Artisans' Land and Mortgage Corporation* (1904), 1 Ch. 796.

Outstanding interest should not be taken to credit of a Profit and Loss Account until the claim is statute-barred, and not even then unless the Directors have decided not to recognize the claim should it subsequently be made.

The same remark applies to interest unclaimed by Debenture-holders, and in the case of a Railway Company incorporated by a special Act, authorizing it to issue

Debenture Stock, bearing interest, subject to Part III (which includes Sections 22 and 27) of the Companies Clauses Act, 1863, which issued Debenture Stock, for which Debenture-holders' Interest Outstanding. it gave certificates under its common seal, and also a warrant for interest under the signature of its Secretary, it was held that, the liability being statutory, the period of limitation was twenty years.—*In re Cornwall Minerals Railway Co.* [1897], 2 Ch. 74.

When part of the capital of a Company consists of Preference Shares, and the dividends on these shares are Preference Dividend in Arrear. cumulative and in arrear, the amount of the arrears should either be calculated and brought into the liabilities, or else a note should be made on the Balance Sheet itself. In the absence of any mention of this liability, the Auditor should qualify his Certificate so as to call the attention of the shareholders to the omission.

The principal item found among the liabilities of a Banking Company is usually the "Amount due on Current and Deposit Accounts." This is the sum of the credit balances of the Customers' Ledgers, and the Auditor can easily ascertain if the amount be or be not correct.

Under the heading "Claims Admitted but not Paid," which appears in the Balance Sheet of Insurance Companies, should be stated the amounts which have been charged against the Revenue Account for claims under policies, but not settled at the date of closing the books.

The Auditor should ascertain that a sum has been charged against the Revenue Account, and appears on the debit side of the Balance Sheet, sufficient to provide for any claims likely to arise in respect of contracts entered into by the Company, and in existence at the date on which the books were closed.

Auditors should require a sufficient sum to be set apart as a Reserve when nature of the business requires it. For example, all Companies transacting insurance business should have a reserve of this nature, for the purpose of meeting claims which, from experience, it is

certain will be made in respect of policies in force at the close of the period under audit.

This sum can only be an estimate, but it should be calculated on the most reliable data that can be procured, such as the experience of the Office in the past, or, if the Company be a new one, that of Companies transacting insurance business of a similar nature.

For this purpose it may be assumed that the premiums are received, and the claims in respect thereof arise at equal intervals throughout the year, and, therefore, at the date on which the books are closed, half the risk will have run off the policies then in force.

The following calculation would then obtain the amount which ought to be charged against the Revenue Account for the year, and included in the Balance Sheet as the reserve—

Mode of
ascertaining
the Reserve for
Insurance
Companies.

(1) Ascertain from the experience of the Company, or of Companies transacting similar business, the rate per cent the losses bear to the net premium income.

(2) Ascertain the amount which bears the same ratio to the net premium income for the year under audit. Half of this amount is the reserve required.

The majority of Insurance Companies employ Agents who are paid by commission on the premiums introduced by them. The commission paid to Agents of Life Assurance Companies and to Superintendents of Agents averages about 20 per cent on the premiums, leaving 80 per cent for the Company. The reserve for claims in the Balance Sheets of Life Assurance Companies is consequently 40 per cent. of the gross premium income.

As all the Insurance Companies do not calculate their reserve in this manner, an Auditor would have no right to object to any other method by which the Directors may have arrived at the reserve, provided, in his opinion, it has been fixed on a sound basis.

If the revenue of a Company, Society, or Institution is derived from annual or other periodical subscriptions, these

are invariably paid in advance, and the privileges acquired thereby are either available from one fixed date to another, or else from the date of the payment of the subscriptions, according to the regulations of the Association. In this case the proper reserve to be charged against the Revenue Account, and included in the Balance Sheet, should, as a rule, consist of the proportions of the subscriptions applicable to the periods between the date on which the books are closed and those on which the subscriptions will expire.

For example, supposing an annual subscription of four guineas to an Association dates from the first of any month, and a subscriber joins on the 20th October, the Association, on closing its books at the 31st December, would take credit in its Revenue Account for the four guineas, but against this should be charged on the debit side three guineas, being the portion of the subscription applicable to the period between the 1st January and the 30th September of the following year, while the same amount should be brought into the liabilities in the Balance Sheet as a "Reserve to provide for the Liabilities on current Subscriptions," or a similar heading.

The Auditor naturally must use his discretion as to whether this precise method of calculating the reserve should be strictly adhered to in the early years of an Association's existence, but in every case the accurate amount should be ascertained as in the two examples just given, and should form the basis for arriving at the reserve, and, except in the case of a new Association, should always be adopted.

Although the terms "Reserve" and "Reserve Fund" are frequently used in the Accounts of Companies as though they were synonymous terms, there is a distinct difference between them.

Difference
between
Reserve and
Reserve Fund.

A "Reserve" is merely the surplus of the credit side of the Balance Sheet over its debit side, but the "Reserve" may be divided under two or three more headings, such as "General Reserve," Reserve for special purposes, and "Balance of Profit and Loss Account carried forward."

Reserves of this nature are either a provision against loss of capital, or a reserve for the equalization of dividends, or again, a reserve may be created as an extra inducement to those with whom the Company may do business to give credit, or one may be created to meet probable losses on the realization of the amounts taken credit for in the Balance Sheet as being due from debtors.

A "Reserve Fund," however, is not merely a surplus shown on the debit side of a Balance Sheet, but must be represented by special investments, which may or may not be shown distinctly on the credit side of the Balance Sheet. If, therefore, the reserve is used in the general business of the Company, it is not a "Reserve Fund," although, perhaps, the term might be properly so used if some stock, used in the ordinary course of the business, was specially set aside, and when made use of represented by cash set aside until reinvested in further stocks and specially ear-marked.

In the absence of any directions as to the investments of a "Reserve Fund," they must be such as are authorized by the Trustee Act, 1893, the sections of which are given in Chapter IV. Occasionally the term "Reserve Fund" is used in the Accounts of Companies in place of "Reserve," or some other term, in consequence of carelessly-drawn Articles of Association, which leave the Directors no option but to use the term.

The term "Surplus" or "Rest" is a better term to use than "Reserve," as no one could then possibly pretend they were under the impression that such was specially invested.

The Directors of a Company were empowered by the Articles of Association to create a Reserve Fund out of the profits of the Company for such purposes as they should think conducive to the interests of the Company, and to employ the Reserve Fund in the business of the Company, without being bound to keep the same separate from the other assets. The Company had built up a Reserve composed partly of premiums received for leases, partly of premiums received on the issue of preference shares, and partly of ordinary business profits.

The Reserve was used in the Company's business, and was not kept separately invested. The Company had incurred a loss arising from the depreciation in the value of its public houses below the amount stated in the Company's Balance Sheet. The Company accordingly applied for the sanction of the Court to a scheme for reduction of Capital, whereby the Company, while retaining a small portion of the Reserve, attributed to the Reserve more than its rateable proportion, and to the Capital Account less than its rateable proportion of the loss.

Held that, the Reserve having been properly created out of profits, in ascertaining the amount of Capital lost, the loss of assets ought to be treated as rateably apportioned between the Reserve and the Capital Account, and that, in the absence of special circumstances, the Company, in proposing a scheme for reduction of Capital, was not bound to wipe out the whole of the Reserve, or to attribute to it more than its due proportion of the loss, though it might do so if it chose; and the Court sanctioned the scheme.—*In re Hoare & Co.* [1904], 2 Ch. 208.

In a case where the Articles of Association of a Company provided that the Directors might, in priority to any Dividend set aside out of "profits" any sum as a "Reserve Fund" for certain specified purposes, or "any other contingencies or purposes of the Company," and might invest the same; that any interest derived from such investment should be dealt with as profits; and that, subject thereto, "the entire net profits of each year" should belong to the shareholders, the Directors year by year carried part of the profits to three Reserve Funds, to meet (a) depreciation of steamers, (b) insurance, and (c) canal improvements; and the remaining profits, after providing for the preferential dividend, were distributed among the ordinary shareholders. These Reserve Funds were not represented by any separate or specific investments, but were merely book-keeping entries, represented in the Company's Balance Sheets by property of various kinds.

The Company's undertaking was eventually sold by special

Act of Parliament at a price which left a surplus in excess of the liabilities of the Company and the capital paid up on the ordinary and preference shares. The sale was completed during the currency of a financial year. On the completion of the sale the Company passed resolutions for a voluntary winding up. It had never been found necessary to resort to any of the Reserve Funds while the Company was a going concern, and part of them had been in fact divided among the ordinary shareholders in the form of bonus; and at the date of the sale three funds representing these Reserve Funds were still standing in the Company's books.

It was held by the Court of Appeal that all three Reserve Funds represented undrawn "profits" uncapitalized, and to be therefore treated as income, to which, subject to the preferential dividend for the broken financial year, the ordinary shareholders were exclusively entitled, and not as "capital" or "assets" distributable among both the ordinary and the preference shareholders; also, that in taking the Accounts for the broken year, the value of the plant and book debts should be taken at the actual ascertained values as stated in the Stock Books, and not at the lower values at which the Company had, according to their regular custom and from motives of prudence, estimated them in a previous annual Balance Sheet on which a dividend had been declared; and that the difference between the two values represented undrawn profits, to which, subject to preferential dividend, the ordinary shareholders were exclusively entitled.—*In re Bridgewater Navigation Company* [1891], 2 Ch. 317.

In addition to possessing a Reserve or Reserve Fund, many Companies, under some other heading on the debit side of the Balance Sheet, have a reserve which is technically known amongst professional Accountants as a "Secret Reserve," and arguments have arisen from time to time in financial reviews and newspapers as to the propriety of this class of Reserve. The object of a Secret Reserve, when legitimately created, is the possession of a fund which will enable the Directors to meet any unexpected claim or liability without having to draw upon the

Secret
Reserves.

admitted or disclosed Reserves, and thus avoid the acquisition of the knowledge of this loss by a rival company, or the causing any disquietude amongst their own shareholders by drawing upon the Reserve shown in previous Balance Sheets, and thus diminishing it in the published Accounts of the Company.

The following examples will explain how Secret Reserves can be created—

By inserting in the Balance Sheet of an Insurance Company, under the heading representing the amount reserved to meet claims in respect of policies in force, a larger amount than is considered necessary, based on the experience of the past.

By reserving a larger amount for possible loss on the realization of book debts than it is expected will be ultimately sustained.

By affixing to the Investments a value in the Balance Sheet below that which the Directors are entitled to take credit for.

By under-valuing the prices of raw material in stock or taking off an unnecessary discount from the manufactured stock-in-trade.

A "Secret Reserve" can therefore be created either by inserting an exaggerated amount under one or more headings on the debit side of the Balance Sheet, or by an unnecessary deduction from the value of an asset, thereby reducing this asset below what is considered a fair value as belonging to a going concern.

When a Secret Reserve is created with the legitimate object above mentioned, an Auditor is not justified in refusing to sign the Balance Sheet without comment. The management of the Company is in the hands of the Directors, who are responsible therefor, while an Auditor has no responsibility as regards the management. For an Auditor to insert in his Report that in his opinion the liabilities are over-estimated has practically the effect of interfering with the management of the Company.

Many Companies have passed away which would

probably at the present moment be in existence had they been provided with a Secret Reserve legitimately created.

Should, however, an Auditor satisfy himself that Secret Reserves are being created, not in the interests of the Company, but for other purposes, such as speculation in the shares of the Company, then the Auditor has a clear duty to perform, and he should insert in his Report a clause to the effect that, in his opinion, the liabilities are exaggerated, or the assets set out at too low a value, as the case may require.

The main objection to the creation of a Secret Reserve is that it deprives those who happen to be shareholders at the date of the creation of or addition to such Reserve of participating in a higher dividend than that which is declared, although earned during their partnership. This is not a good argument; the Directors have not to consider the interests of individual shareholders or even a group of shareholders, their business is to preserve the capital of the Company and keep it in existence as a going concern, and if a Secret Reserve is created to this end they are, undoubtedly—from a financial and commercial point of view—justified in so creating it.

A “Sinking Fund” is an Account to which a certain amount is transferred from the Profit and Loss Account, or Revenue Account, by debiting one of the latter Accounts

Sinking
Fund.

and crediting the “Sinking Fund” Account.

The amount this Account represents should be invested outside the business, and allowed to accumulate at compound interest. A “Sinking Fund” differs from a “Reserve Fund” in that the investments representing it must never be applied to any purpose save that for which the Fund was created, while the investments of a Reserve Fund, unless it is a Capital Account Reserve Fund, which may not be distributed except in a winding up, may be realized for the equalization of dividends, replacing lost Capital, or for any other purpose within the Memorandum and Articles of Association of a Company.

The surplus brought from the Revenue or Profit and Loss Account of a Company, after allowing for the payment of any

dividend or bonus to shareholders, is usually brought into the debit side of the Balance Sheet. It may, however, be applied towards the reduction of a credit balance in the Balance Sheet unrepresented by any asset, or may be added to or form the commencement of a Reserve.

Balance of
Revenue
Account
(Surplus).

Frequently the surplus is carried forward from one Revenue Account to the following one ; sometimes part only is carried forward and the remainder placed to the credit of the " Reserve."

To this there cannot be any objection. It is always undesirable to have recourse to the " Reserve Fund " for the purpose of paying a dividend or for any other use, and a balance carried from one Revenue Account to the next, or merely placed temporarily to " Reserve," often enables a dividend to be declared without disturbing the Reserve Fund, and, consequently, avoids giving alarm to the shareholders.

In the case of a firm or individual, the balance of the Revenue Account is credited to the Capital Account of the partners or individual, as the case may be. The amount to be credited to the partners of a firm is determined by the Articles of Partnership, if there be no Articles each partner is entitled to an equal share of the profits.

CHAPTER XII

THE BALANCE SHEET—CREDIT SIDE

CREDIT Side of Balance Sheet frequently improperly called Assets Side—Division under Four Headings—Government Securities—Shares and Debentures in Joint Stock Companies—Investments should stand in Names of the Trustees—Freehold and Leasehold Property—Construction Accounts Plant and Machinery—Workmen's Tools—Mortgages—Loans—Debtors—Bills Receivable on hand—Agents' Balances—Company's own Shares—Interest on Investments due and accrued—Cash—Stock-in-Trade—Works in Progress—Office Furniture—Purchase of Business, Goodwill, etc.—Sinking Fund for same—Expenditure on Development of Mine—Purchases on Hiring Agreements—Proportion of Payments unexpired—Preliminary Expenses—Spreading Expenditure over a term of Years—Balance of Revenue Account (Deficiency)—Balance Sheet should be so explicit as to be understood by every Shareholder—Balance Sheet to be filed with Registrar of Companies.

It was explained in the previous Chapter that the debit side of the Balance Sheet was frequently erroneously called the Credit Side not Assets Side. Liabilities Side, and instances were given of items which appear on that side of the Account which are not really liabilities. Still stronger reasons exist for not calling the credit side of the Balance Sheet the Assets Side, as is still the practice in many concerns. Professional Accountants who themselves used the term for many years have lately been impressed at the meaning endeavoured to be put upon it, it never having previously occurred to them that anyone could truthfully assert that they believed that the amounts opposite the items on the credit side of a Balance Sheet were their actual realizable value. A Statement of Liabilities and Assets cannot possibly balance, one must of necessity be at least a trifle in excess of the other, and the use of the term, therefore, can only be looked upon as one of the many examples which constantly occur of the misuse of a popular expression.

The credit side of a Balance Sheet is in some instances a Statement of Assets. Banks, Insurance, Discount, Trust and Investment Companies, etc., where the items consist entirely of cash, balances at banks, amounts due from debtors, investments

Except in
certain cases.

at realizable prices, mortgages and premises, are examples. Even in these cases the debit side would not be accurately termed the liabilities side, as, in addition to its including the capital, it also includes any reserve or surplus of unappropriated revenue.

At the same time it must not be understood that an Auditor has simply to ascertain that the amounts taken credit for in the Balance Sheet in respect of property or assets are merely their book values. Prior to the Auditor of a Company commencing his duties, the figures to be inserted in respect of these items have to be settled by the Directors, and the ground upon which they have to arrive at the figure to be taken credit for in respect of each item is the balance of its Ledger Account. This is also the basis from which the Auditor starts in his endeavour to satisfy himself that the amount finally decided upon by the Directors is or is not correct. "Auditors have to check the books and see that the amounts are correct, but it would be stretching the duty of an Auditor considerably beyond what is reasonable to say that he is to go into the books of a Company so as to be able to check the valuation." —*In re Kingston Cotton Mills Co., Ltd.*, II, Manson 631.

The first point for consideration, therefore, in criticizing the credit side of the Balance Sheet may possibly be whether there is any reason to believe that the amount taken credit for in the previous Balance Sheet and passed by the Auditor himself or a previous Auditor was incorrect. It is usual to take for granted the previous Accounts are correct, unless from some information given to the Auditor, or from some other indication, he has reason to believe that such is not the case.

The items in the credit side of a Balance Sheet may be divided into four classes: Realizable Assets, Unrealizable Assets, Unrepresented Expenditure, and Losses. Among the first class may be enumerated Government Securities, Shares and Debentures in dividend-paying Companies, Freehold and Leasehold Property, Mortgages, Debts due to the concern, Cash, and Stock-in-Trade.

Credit Side may
be divided into
Four Headings.

Examples of the second class are the amounts expended in acquiring or erecting Buildings for the purposes of the business, Plant, Fixtures, Workmen's Tools, etc.

The third class would include the amount paid for Goodwill, and the balance of any Expenditure Account, such as for advertising, spread over a term of years, while the fourth would consist of the deficiency to date on the Profit and Loss Account or Revenue Account, and any Special Loss Account which might have been carried direct into the Balance Sheet.

Under the general heading of "Government Securities" may be included all investments the repayment of and the dividends on which are guaranteed by recognized Governments. This heading, however, unless full details are given, is very unsatisfactory, and Companies having miscellaneous investments of this nature may with great advantage adopt the division prescribed by the Assurance Companies Act, 1909, Third Schedule, into British, Indian and Colonial, and Foreign Government Securities.

When among the assets of a Company there is an amount under the heading "British Government Securities," the Auditor should ascertain that only those securities have been included whose repayment and dividends are guaranteed by the British Government.

Indian Government and Colonial Government Securities should, therefore, not be entered here, as the dividends thereon are guaranteed only by their respective Governments, and not by the Home Government, except in a few instances.

It is also desirable, but not necessary, to give the details of each class of security, the amount representing each being stated in an inner column, the total only being extended.

The vast difference in the relative value of the securities of Foreign Governments is such that an Auditor, in the case of a Company, should endeavour to induce the Directors to state on the face of the Balance Sheet the name of each investment in Foreign Government Securities, with the respective amounts taken credit for,

It would be scarcely more absurd to place before shareholders a Balance Sheet with the entire property of the Company stated in one amount, under the heading "Assets," than to give them one with investments in several Foreign Government Securities under a heading without any details.

While some Governments pay the stipulated interest to the holders of their bonds, which are readily saleable, and in some instances are at a premium above their nominal value, others have not paid the interest on their loans for years, and, consequently, the market values of their securities are at a considerable discount.

When a Company holds, as an investment, the shares or debentures of other Companies, it is desirable the name of each Company, together with the number of the shares or debentures held in each, should be stated, also their respective amounts. In the case of investment in the shares and debentures of many Companies, this might crowd the Balance Sheet with too many entries, and an Auditor has no authority to require this to be done. Many Investment and Trust Companies, also Insurance Companies, append a list of investments as a schedule to their published Accounts. In the case of shares, the amount paid up on those of each Company should also be stated, and any liability to further calls, but it is not considered a suitable investment for a Company to hold shares of other Companies which are not fully paid up.

If, however, there is any liability attached to holding shares in which the money of the Company is invested, the shareholders should be made aware of this fact by its being disclosed in the Balance Sheet, so that it may either meet with their approval or cause them to take steps to be released from this liability by instructing their directors accordingly. Should the Balance Sheet be silent on this point the Auditor should call the attention of the shareholders to the contingent liability in his Report.

If credit has been taken in the Revenue Account for accrued interest on any investment which is quoted in the official list of any Stock Exchange as "cum dividend," such accrued

interest must be deducted from the value of the investment to be taken credit for in the Balance Sheet.

The investments of a Company or Institution unless a Corporation aggregate, should be made in the names of the duly appointed Trustees, but, should there be none, they should be held in the names of two at least of the Directors or members of the governing body, and never in the name of an official or of one of the Directors or Governing body.

**Investments
should stand in
the names of
the Trustees.**

It should be distinctly stated whether the values placed against the investments are the cost price, market price, or estimated value.

The first-named is the most usual one adopted by Companies, and is certainly the best so long as the cost price does not exceed the market value. When an estimated value is inserted, the Auditor should guard against too sanguine a calculation being taken credit for.

Freehold and leasehold property are very frequently found among the investments of a concern. With reference to the former, the Auditor must be careful that the amount brought into the Balance Sheet as representing its value does not exceed the cost price. All costs and other professional charges incidental to the acquisition of the freehold should strictly be charged against the Revenue Account, and not added to the actual purchase money; but, as the practice is to the contrary, the Auditor of a Company cannot raise any objection in his Certificate should this be done.

**Freehold
Property.**

The method of dealing in the Accounts with leasehold property has been already treated in Chapter X. The amount which should be brought into the credit side of the Balance Sheet is the balance of the Ledger Account after the proper amount has been written off and charged against the Revenue Account.

**Leasehold
Property.**

If the Auditor has succeeded another Auditor in his duties, he should ascertain if the proper sum has been written off the Lease Accounts and charged against the previous Revenue Accounts, and that the balance as set out is a fair and proper

sum to be inserted as the value of the leases at the date of the Balance Sheet having regard to the fact they are the property of a going concern. For this purpose the table in the Appendix will be of assistance to him.

The Capital of the shareholders, in the case of certain Companies, is expended wholly or partially on the construction of a railway in a foreign country or in one of the Colonies, or in the erection of a factory or other building or in the construction of some asset of a more or less permanent nature. This expenditure may, unless forbidden by the Articles of Association, be carried to the credit side of the Balance Sheet and remain there, subject to the proper amount to be deducted therefrom periodically for depreciation; except that in the case of a construction on freehold land no depreciation need be written off, provided the full maintenance and repairs thereon are charged against Revenue.

**Construction
Accounts.**

If only the "actual cost" is to be treated as Capital expenditure, it has been held that the term "actual cost" is limited to the amount of money expended on the work, and that interest thereon may not be added.—*Public Works Commissioner v. Hills* [1906], A.C. 368.

Where shares of a limited Company are issued for the purpose of raising money to defray the expenses of the construction of any works or buildings, or the provision of any plant which cannot be made profitable for a lengthened period, the Board of Trade have power under Section 91 of the Companies (Consolidation) Act, 1908, to sanction the Company paying interest at a rate not to exceed four per cent per annum on so much of that share Capital as is for the time being paid up for the period, subject to the conditions and restrictions mentioned in that section. This interest may be charged to the account on the credit side of the Balance Sheet to which the cost of the construction of the work or building or the provision of plant has been charged.

It would appear that interest on debentures or money borrowed for a like purpose may be so treated. In a case where a Tramway Company, for the purpose of converting

its undertaking to a system of electric traction, issued conversion debenture stock, and the Directors passed resolutions that the interest on this stock should be treated as part of the cost of construction and charged to Capital Account during the construction of the works, the Memorandum and Articles of Association containing no provision relating to this subject, it was held there was no general rule of law which compelled Companies to charge to Revenue Account interest on moneys borrowed for the purpose of constructing works, or prohibited them from charging it during construction to Capital Account ; that, in the absence of any provision to the contrary, Companies were entitled to act in the same way as commercial men dealing honestly in their own business ; and, therefore, that the Company were at liberty to charge the interest in question to Capital Account.—*Hinds v. Buenos Ayres Grand National Tramways Co., Ltd.* [1906], 2 Ch. 654.

A Company incorporated by Act of Parliament, being already in possession of works constructed by means of Capital raised by the issue of shares, obtained by a later Act power to raise more Capital for the construction of additional works. These works were of a peculiar kind, and could not be constructed by means of contracts taken in the usual way, but required that the Company should find the plant and employ workmen to act as directed by their Engineer. The Capital for the works was raised by the exercise of borrowing powers and by preference shares, the holders of which had certain options to convert them into ordinary shares. It was held that the Company were entitled to add to the Capital required for the construction of the works the amount of the interest or dividends on the loans or shares by means of which it was raised until the completion of the works.—*Bardwell v. Sheffield Waterworks Co., L.R.*, 14 Eq. 517.

Plant and Machinery is a very important asset in the case of manufacturing concerns of every description. In his judgment in an action brought under the Employers Liability Act, 1880,

Plant and
Machinery.

Lindley, L.J., defined Plant in the meaning of this Act to include “ whatever apparatus is used by a business man for

carrying on his business, and not his stock-in-trade, which he buys or makes for sale ; but all goods and chattels fixed or moveable, live or dead, which he keeps for permanent employment in his business.”—*Yarmouth v. France* [1887], Q.B.D., 658.

The amount to be taken credit for in the Balance Sheet requires to be carefully investigated by the Auditor, as the life of Plant varies considerably. From a book-keeping point of view, the various classes of Plant and Machinery should be classified for the purpose of determining the amount to be written off in respect of depreciation against the Revenue Account, leaving the correct amount to be carried to the credit of the Balance Sheet as representing its value, having regard to the number of years it is expected to last.

Should any article of plant have been absolutely superseded, the Auditor should be careful to ascertain that credit has not been taken for any of the cost of the original Plant and Machinery thus superseded.

The tools used by workmen in the factory are practically always the property of their employers and although in many concerns it is the custom for the total amount to be charged direct against the Revenue Account, in many cases credit is taken in the Balance Sheet for “Workmen’s Tools.” The Auditor must ascertain that full allowance has been made for wear and tear which, as a rule, is very considerable, the rate of depreciation chargeable against the Revenue Account varying, as a rule, from twenty-five as a minimum to fifty and even sixty per cent. as a maximum.

Unless the business of a Company, among whose assets the heading “Mortgages” appears, consists solely in making advances abroad, the sums lent on mortgage on property out of the United Kingdom should be separately stated, and not be included under the above general heading without remark.

The Assurance Companies Act, 1909, requires this to be done by Assurance Companies, and all other Companies should be recommended by their Auditor to follow this example,

Mortgages on freehold and leasehold property should not be mixed up with mortgages on other property, such as on reversions or life interests, or on stocks or shares. Again, money borrowed on mortgage under the authority of an Act of Parliament for a fixed term of years, where the principal is either repaid by equal annual instalments or the principal and interest together in a certain number of years, should not be included under one heading with those mortgages which can be called in by notice in the usual way.

An Auditor should ascertain that should any property comprised in the covering deed be sold, that any property substituted in lieu thereof is brought within the four corners of the deed, or that it is charged by a separate deed, which is properly registered, as required by Section 93 of the Companies (Consolidation) Act, 1908.—*Cornbrook Brewery Co., Ltd. v. Law Debenture Corporation, Ltd.* [1904], 1 Ch. 103.

When money is advanced on a ship by way of mortgage, a Bond has to be obtained from the Custom House, on the form prescribed by the Customs, for the consent of the Board of Trade, filled up, and returned to the Customs at the Port of Registry.

Mortgages
on Ships.

The Customs authorities will then enter the particulars of the Bond against the entry of the Vessel in the Register of Shipping. The prompt registration of a Mortgage Deed at the Port of Registry of a ship is essential to the security of the Mortgage, as a Mortgage takes its priority from the date of production for registry, not from the date of the instrument. The Mortgage is kept by the Mortgagee, and should be produced to the Auditor, who should also satisfy himself that it has been duly registered.

Unless it is part of the legitimate business of a Company to make advances, the heading "Loans" is a most objectionable one to be found on the credit side of a Balance Sheet.

Loans.

When, however, the funds of a Company have been applied to making advances which have not been repaid at the date of closing the books, the Auditor should ascertain that the amount then due from borrowers has been clearly stated

under the above heading. It should not be included among the "Investments" or "Sundry Debtors," or disguised under any other heading.

"An Auditor has nothing to do with the prudence or imprudence of making loans, with or without security."—*In re London and General Bank* (No. 2) [1895], 2 Ch. 682.

An Auditor of a Company has, however, to ascertain whether the Articles of Association or private Act authorizes the Directors to make loans, and he must also satisfy himself that the amount taken credit for is likely to be ultimately realized.

A clause in the Articles of Association empowering Directors on behalf of the Company to "lend money" and generally undertake such other financial operations as might, in their opinion, be incidental or useful to the general business of the Company, has been held to authorize a loan to a faithful and confidential servant of the Company.—*Rainford v. James Keith & Blackman Co., Ltd.* [1905], 2 Ch. 147.

Loans on its policies by a Company transacting Life Assurance business have to be separately stated on the credit side of its Balance Sheet.

After deducting from the total amount shown in the Company's Ledgers to be due to it from its customers the allowance for bad and doubtful debts charged against the Revenue Account, as explained in Chapter XI, the balance representing the actual amount expected to be ultimately realized should be placed on the credit side of the Balance Sheet under "Amounts due from Sundry Debtors," or a similar heading.

The amount of the Bills Receivable on hand may be included under the same heading as the amounts due from sundry debtors, but it is more correct to state it separately. When a Bill Receivable has been discounted, as far as book-keeping is concerned it entirely disappears, although subject to the liability before alluded to, and is not therefore included on the credit side of the Balance Sheet.

When a concern employs agents as a means for obtaining

business, the amount either remaining in their hands, or which has to be collected by them and accounted for, should

Agents' be stated separately, and not included with
Balances. "Amounts due from Sundry Debtors."

The Auditor should be careful that commission and all other charges which will be allowed to the agents are deducted from their balances and charged against the Revenue Account under their proper headings, so that the difference only, which is the amount which the concern should ultimately receive, is taken credit for in the Balance Sheet.

A list of the agents' balances should be prepared in the same manner as suggested previously for the sums due from the ordinary debtors, and those amounts which it is considered will not be ultimately realized may be treated as bad or doubtful debts.

When a Company, whose shares are not fully paid up, holds any of its own shares as an investment, the particulars should be clearly set forth in the Balance Sheet,

Company's and not be included in the amount representing
own Shares. the value of the shares of other Companies

held as an investment.

Unless this be done the shareholders are not fully aware of the extent of their liability in the event of the Company going into liquidation, for, should that happen, the shareholders, in addition to having to meet calls made on their own shares, would be liable, in the proportion of their respective holdings, to pay the amount which would otherwise be raised by the payment of the calls made on these shares held by the Company were they in the hands of private and responsible owners.

The House of Lords decided that, although the Articles of Association of a Limited Company, formed for the purpose of carrying on a manufacturing business, authorized the Company to purchase its own shares, such a Company had no power under the Companies Acts to make the purchase, and that it was *ultra vires*. In delivering his own judgment Lord Macnaghten expressed his opinion that if a power to purchase its own shares were found in the Memorandum of Association

of a limited Company, it would necessarily be void.—*Trevor v. Whitworth*, 12 App. Cas. 409.

The interest and dividends due on investments, but not received at the date of closing the books, as well as any accrued interest, should, as stated in Chapter XI, be taken credit for in the Revenue Account, and, consequently, the same amount must be taken credit for in the Balance Sheet.

Interest on
Investments
due and
accrued.

Under the heading "Balance at Bankers" may be included not only the balance of a current Account, but also any sum that may have been placed on deposit; also any balance in the hands of the Bankers to meet any outstanding dividend warrants.

Balance at
Bankers.

For the purpose of verifying the correctness of the balance stated in the Balance Sheet to be in the hands of the Company's Bankers, the Auditor should agree it with the Bank Pass Book, and he should either also ascertain on inquiry at the banking house that the balance shown therein agrees with the Banker's Ledger, or obtain a Certificate from the Banker of the balance at the close of business on the date of the Balance Sheet.

The "Balance at Bankers" shown in the Balance Sheet should agree with that of the Cash Book, but it is not usual, as previously explained, for this sum to be identical with that found in the Pass Book, for the reason that the latter is affected by cheques *in transitu*, both debtor and creditor.

Under the heading "Cash in Hand" should be stated the amount of the balance of the Petty Cash Book not accounted for by any expenditure, and which should, therefore, be in the possession of the cashier.

Cash in Hand.

As the Auditor seldom commences his duties before at least several days have elapsed after the date on which the books are closed, he can only check the correctness of this balance by ascertaining that the cashier has in hand the amount unaccounted for by him in the Petty Cash Book at some subsequent date.

It is the custom in many offices to require the cashier to pay into the bank, on the day on which the books are closed,

the balance of cash in his hands. This not only proves that the cashier has the money in his possession, but also spares the Auditor a somewhat disagreeable duty.

When examining the cash in hand the Auditor has frequently presented to him, as accounting for part of the balance, cheques received not paid in, payments made in advance to clerks for salaries, to be deducted when the monthly or weekly cheque is drawn for that purpose, and perhaps some other small advances; the Auditor must satisfy himself that these advances are properly authorized.

Stock-in-Trade. The amount to be taken credit for in respect of stock-in-trade is the same as that which appears on the credit side of the Revenue Account.

A Contractor, Steamship Builder, or a Company carrying on any business of this or of a similar nature, is entitled to take credit in the Profit and Loss Account, and consequently in the Balance Sheet, for "Works in Progress." In proof of the amount taken credit for each contract or piece of work, there should be produced to the Auditor sheets, certified by responsible officials, showing the cost of material, including any unpaid for and appearing among the liabilities, the wages paid, and any other item which can be specially hypothecated to the works in progress. If any payments have been received on account they must be deducted from the amount taken credit for, or the amount of the payments may be included in the liabilities.

The Auditor should be satisfied that the amount taken credit for Office Furniture does not unduly exceed its value. A percentage should be written off periodically, and charged against the Revenue Account for depreciation, until the balance of the Ledger Account has been reduced to the amount representing its value.

Purchase of Business, Goodwill, etc. When a Company has been formed for the purpose of acquiring and carrying on an established business, the consideration may be either money, shares (fully paid up or otherwise), or partly money and partly shares. In any case the consideration

can only be entered in the Books of Account as if it were paid for in cash, under some appropriate heading, such as that in the margin.

So long as the Company is prosperous and its shareholders receive a satisfactory dividend, this Account is apparently as good an asset as a realizable investment, but in the event of the Company going into liquidation the greater part, if not the whole, of its value at once disappears.

There is no precise definition of the term "goodwill," it has no signification except in connection with a continuing business. It is not easily susceptible of valuation, if susceptible at all. It is never sold apart from the business itself. —*Crutwell v. Lye*, 17 Ves. 335 ; *Austen v. Boys*, 30 L.T.Rep. O.S. 216 ; *Churton v. Douglas*, 33 L.T. Rep. O.S. 57.

It is therefore very desirable, instead of dividing all the profits among the shareholders of a Company, for a sinking fund to be raised, so that at the end of a certain period this account may be either written off, or be reduced in amount to a nominal value. If this plan be adopted also with other accounts, representing expenditure, and they have by that means been practically abolished, the shareholders will eventually have their money invested in realizable securities.

Sinking Fund
for same.

If the Capital of a Company, or even part of it, has been invested in the acquisition of a business for a term of years only, a sinking fund should be raised sufficient to redeem the capital at the expiration of this term.

The foregoing remarks apply to all Companies whose capital or part of it has been expended in the acquisition or establishment of the business to carry on which it has been formed.

For example : the capital of a Manufacturing Company is partly required either for acquiring the building, plant, machinery, and goodwill of an established business, or in erecting the necessary buildings, purchasing the plant, etc., and creating a market for the sale of its manufactures. That of a Mining Company is partly required either for buying a proved and developed mine, with its necessary plant, etc.,

or in paying wages for sinking the shafts, driving the adits, purchasing bricks, plant, etc., and for completing the operations necessary to enable the Company to earn a revenue in the future, and although the Memorandum and Articles of Association of a Company may authorize the payment of dividends without providing for the return of capital expended on what is termed a wasting asset, it is distinctly unwise and unbusiness-like to take advantage of such a power.

Directors and Auditors of Mining Companies are frequently at conflict as to the proper apportionment between capital and income of expenditure connected with the development and extension of the workings of the mine.

Expenditure
on Develop-
ment of Mine.

In the absence of any provisions in the Articles of Association preventing them, Directors may safely employ upon any class of mining work which they deem expedient in the interests of the Company, including any work undertaken with the object of striking at a lower level beds of ore discovered in the higher levels and believed to exist at a greater depth, any moneys of the Company in their hands not wanted in a reasonable course of business for other purposes, as e.g. payment of existing debts, or providing for a Dividend declared or about to be declared. When the work has been done, it will be a matter of account as to how the amount expended is to be debited as between Capital and Revenue.

In determining this, the Directors should proceed upon the principle that anything which is of permanent value to the mine (in the sense that they cannot say that its usefulness will be exhausted within any reasonably short time) may properly be debited to Capital, but that any work the usefulness of which will be exhausted at the end of some reasonably short period of time is to be regarded as an item of expenditure which should be brought into account in profit and loss, but distributed fairly over several years, and not all charged against the revenue of the particular year.

For example, improvements of, or additions to a Company's mills, so as to enable the Company to treat the ore extracted more effectually or more profitably, may properly

be charged against Capital if the Directors, forming the best judgment they can, are of opinion that the usefulness of the mills will not come to an end, say, by the exhaustion of the ore at the end of a short period of time, or if they are of opinion that the buildings for purposes of realization when the ore has been exhausted will be of increased worth equivalent to the additional amount expended but otherwise the item should be treated as one to be distributed over such length of time as the additions will be of value to the Company.

Accounts should be kept at the Mines so as to apportion expenditure, and it is conceived that Directors will not be personally liable if they apportion the expenditure upon development *bonâ fide* as between Capital and Revenue according to the best of their judgment upon the principles above stated. They would probably be held personally liable if they dealt with a sum which in their judgment was within those principles, one which ought to be brought into profit and loss by way of distribution over several half-years, by debiting that to capital, and never recouping capital in respect of it, and dividing dividends upon that footing.

To give a concrete instance : suppose the Directors expended money in driving a level to reach certain ore, which they believe to exist, and they find the ore, and as soon as it is worked out the level becomes useless, the profit of getting that ore is really the difference between the sale price of the ore and the wages, etc., spent in getting it, including the wages spent in making the level to reach it, which, *ex hypothesi*, has become useless so soon as that ore has been extracted.

Plant and machinery are sometimes purchased under what is known as a hiring agreement, that is, an agreement in which it is provided that after the lessee has paid a rent for the use of an article for a certain number of years it shall become his absolute property on the payment of a nominal sum at the expiration of the period. Colliery wagons are frequently purchased under a five years' agreement of this description.

A Company, firm, or individual is certainly entitled to

take credit in its Balance Sheet for a proportionate part of any payments of this nature, after charging the Revenue Account with a fair and reasonable amount for the use of the articles acquired under the hiring agreement.

Credit may also be taken in a Balance Sheet for the unexpired proportion of rent, taxes, rates, insurance, salaries, or any similar class of payments made in advance of the balancing date.

Payments
unexpired.

The expenses incurred incidental to the obtainment of the share capital of the Company are, when they are not borne by the vendor, usually collected under the heading of "Preliminary Expenses." As it would press unfairly on the Revenue Account of the first year were the total amount thus expended charged against it, it is usual, as already explained in Chapter X, for the Directors to charge only a proportion, varying from one-tenth to one-third, against each year's Revenue Account, and to place the balance, until the Account be thus gradually extinguished, on the credit side of the Balance Sheet.

Preliminary
Expenses.

The Auditor's duty, therefore, in dealing with this Account, is to ascertain first of all by whom the expenses of floating the Company have to be borne. If the prospectus or the agreement between the vendor and the Trustee on behalf of the proposed Company, afterwards adopted by the Company, states they are to be paid entirely or partly by the vendor, he should see that the Company are not charged with them, or only to the authorized extent. If they are to be borne by the Company, he should object to any expenses being included except those actually incidental to the obtainment of the share capital, or to making the necessary arrangements for the Company to commence its business. When a prospectus has been issued he must satisfy himself the Preliminary expenses do not exceed in amount the sum stated therein.

Particulars to
be included
therein.

The following disbursements may be properly brought into the "Preliminary Expenses" Account, and any others in addition legitimately and properly expended, as indicated above, connected with the formation and establishment of the Company.

The legal expenses for the preparation of the Memorandum and Articles of Association and the necessary agreements for the purchase of any business or property, the cost of filing the necessary documents with the Registrar of Joint Stock Companies, and the cost of all the legal work transacted on behalf of the Promoters and Directors of the Company until the first allotment of shares has been made, including stamps and other expenses out of pocket.

The legal and Parliamentary expenses for obtaining a private Act of Parliament incorporating the Company, and for obtaining, if necessary, an extension of the same.

The printers' and stationers' bills for printing the private Act, Parliamentary papers, Memorandum and Articles of Association, prospectuses, notices, plans, books of Account, etc.

The advertising account for the advertisement of the prospectus and notices.

The brokerage paid to those employed by the Directors to place the shares, usually a small percentage on the capital introduced, provided the payment of brokerage is, in the case of a Limited Company, not contrary to the Memorandum and Articles of Association.

“ Although a promoter of a Company cannot be considered an agent or trustee for the Company, the Company not being in existence at the time, yet the principles of the law of agency and trusteeship are applicable to his case, and he is accountable for all moneys obtained by him from the funds of the Company without the knowledge of the Company.”

Allowed to
Promoter of
Company.

“ The fact that a promoter is acting as agent for the vendors in getting up a Company for the purchase of their property does not exonerate him from accounting to the Company, when formed, for any secret profit made by him.”

“ In estimating the amount of the secret profit for which a promoter was accountable to a Company he was held entitled to be allowed the legitimate expenses incurred by him in forming and bringing out the Company, such as the reports of Surveyors, the charges of Solicitors and Brokers, and the cost of advertisements ; but not a sum of money which he

had expended in obtaining from another person a guarantee for the taking of shares.”—*Lydney and Wigpool Iron Ore Co. v. Bird*, 33 Ch. D. 85.

By Section 89 of the Companies (Consolidation) Act, 1908, it is lawful for limited Companies to pay certain commissions in connection with the issue of Share Capital, but Section 90 of the same Act enacts that where a Company has paid any sums by way of commission in respect of any shares or debentures, or allowed any sums by way of discount in respect of any debentures, the total amount so paid or allowed, or so much thereof as has not been written off, shall be stated in every Balance Sheet until the whole amount thereof has been written off. An Auditor, therefore, should not allow, without comment in his report, for any such commission or discount not written off to be added to any Expenditure Account and remain on the Credit side of the Balance Sheet undisclosed.

The following clause, or one similar, is frequently inserted in Articles—

Spreading
Expenditure
over a term
of Years.

“Any expenditure which, in the opinion of the Board, shall be of an extraordinary nature, and not fairly chargeable against the profits of the half-year in which they were incurred, may be treated as Suspense Expenditure, and may be spread over a series of years as the Board may determine, and the amount of such expenditure for the time being outstanding may for the purposes of calculating the profits of the Company, and for the purpose of dividends, be reckoned as an asset.”

Even when this clause is absent it is considered an Auditor may pass without comment a Balance Sheet with expenditure thus treated therein, as it is in accordance with the manner in which a prudent business man would treat expenditure of this nature in connection with his own affairs.

Balance of
Revenue
Account
(Deficiency).

Perhaps the most unsatisfactory item which can be found on the credit side of the Balance Sheet is that representing a deficiency. This is usually the result of a loss on the trading, brought from the Revenue or Profit and Loss Account, and

as long as it exists no dividend should be paid to the shareholders, although in law it may be allowable.

The Auditor should require the existence of a deficiency to be clearly set forth in the Balance Sheet, and in such a manner that the amount could not possibly be supposed by the shareholders to represent an asset.

The Balance Sheet, where finally approved by the Auditor, should be so clearly stated that every shareholder of ordinary intelligence can understand it. A knowledge of book-keeping is not essential to the comprehension of a Balance Sheet properly drawn ; and, although according to the recognized method of preparing a Balance Sheet, amounts representing the balance of certain Expenditure Accounts are placed on the same side as the assets, the Auditor should endeavour to induce the Directors to have them so stated that they cannot be mistaken for realizable and marketable securities.

Balance Sheet
should be so
explicit as to be
understood by
every
Shareholder.

“ A full and fair Balance Sheet must be such a Balance Sheet as to convey a truthful statement as to the Company's position. It must not conceal any known cause of weakness in the financial position, or suggest anything which cannot be supported as fairly correct in a business point of view.”—*In re London and General Bank* (No. 2) [1895], 2 Ch. 692.

Within twenty-one days after the annual general meeting of a limited Company, there has to be filed, with the Annual List of Members and Summary, prepared in accordance with Section 26 of the Companies (Consolidation) Act, 1908, on the fourteenth day after such meeting, a statement in the form of a Balance Sheet, audited by the Company's Auditors. This Statement must also contain a summary of its share capital, its liabilities, and its assets, giving such particulars as will disclose the general nature of those liabilities and assets, and how the values of the fixed assets have been arrived at, but the Balance Sheet need not include a Statement of Profit and Loss.

Balance Sheet
to be Filed.

Now, should this Statement be the same as the one which

has already been certified by the Auditors, with the exception that against the fixed assets there must be placed a statement showing how the values have been arrived at, such as—“Cost price,” “Cost price less allowance for depreciation,” “Value at the market price at date of Balance Sheet,” etc., it need not be again submitted to the Auditors, as this Statement does not require to be actually signed by the Auditors, although it should bear evidence upon it that it has been audited by them.

It does not necessarily follow that an exact copy of the Balance Sheet of the Company, as submitted to the annual general meeting, should be included in this annual return, although it must necessarily be based upon the information contained therein. If a special Statement has to be prepared for the purpose of its being filed with the annual return, then it must be submitted to the Auditors and be signed by them ; but such work is not part of their duties, and is not included in the fee voted them at the annual general meeting of the members of the Company.

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CHAPTER XIII

SPECIAL POINTS FOR CONSIDERATION IN VARIOUS CLASSES OF AUDITS

BANKS—Colonial Banks—Savings Banks—Discount Houses—Railways—Trust and Finance Companies—Insurance Companies—Building Societies—Breweries—Judicial Trustees—Solicitors—Stockbrokers—Single Ship Companies—Mines, Collieries, etc.—Co-operative Stores—Landed Estates—Executors and Trustees—Municipal Corporations—Newspapers—Theatres—Clubs—Schools and Colleges.

IN the Chapters dealing with the Revenue or Profit and Loss Account and the Balance Sheet reference is made to the various items which are usually found in these Accounts, but in each class of audit there are special points not always found in audits of a different class, which require consideration by the Auditor before he affixes his Certificate, and the following examples are given for the guidance of Auditors.

Each class of
Audit has
special points
for
consideration.

Banks.—The very large amount of available cash which a Bank is compelled to keep renders it necessary for the Auditor to attend at the close of business on the day on which the Balance Sheet is to be dated, to count the Bank Notes, the reserve of Gold, Silver, and Copper in bags, and Cash in the till. The balance at the Bank of England and other Banks should be verified by Certificates direct from these Banks.

The Securities held against the Loans should be examined. When temporary Loans are made to customers on deposit of their securities lodged for custody, the Auditor should ascertain there is sufficient cover. For Loans made on deposit of Deeds, he should see the Deeds, and ascertain that they are conveyed to the partners of the Bank, or to the Officials if a Company. For Loans made to Stockbrokers from Account to Account, he should check the Securities with the lists lodged by each Broker, and ascertain that there is a sufficient margin as cover.

The Bills discounted should be examined one by one against

the books in which they are entered, and the Auditor should be satisfied that, having regard to the drawers, the acceptors, and the indorsees, they are likely to be paid on maturity. He should also ascertain that rebate of interest is allowed for when it is the practice to credit the Interest Account with the total amount of discount on the day the Bill is discounted.

The sheets containing the customers' balances should be checked with the Ledgers, and where there are overdrafts, the Auditor should ask for the Security, although it is impossible to state that a Bank has no right to lend to certain persons without any Security. Where there is a Loan long outstanding, he should ask for an explanation, and, if such is not satisfactory, require a reserve to be made ; he should also ascertain that interest on Loans has been charged periodically against the Current Accounts of the Customers.

The total amount of the overdrawn accounts should appear on the credit side of the Balance Sheet, and not be deducted from the Customers' Balances, which appear on the debtor side.

The Investments of the Bank should be examined in accordance with the principles laid down in Chapter XV.

Colonial Banks.—The chief receipts of the branch in England of a Colonial Bank are money received from Depositors, which amounts should be checked with the Colonial Banks. counterfoils of the Deposit Receipt Books.

Deposits paid off during the period should be checked with the surrendered Deposit Receipts.

The balances should occasionally be checked with the Deposit Ledgers.

When the Bank lends money to Stockbrokers from Settlement to Settlement, the Auditor should attend before any variation takes place in the securities deposited, and examine them with the borrowing notes, and also ascertain that the advances are made on sufficient margin.

The Cash Book should be checked with the Loan Ledger, and the balances in the Loan Ledger should be checked with the list of loans agreeing with the General Ledger. Bills Receivable should be examined with the Bills themselves

as entered in the Bills Receivable Book. The Bills Payable Book and Bills Receivable Book and the Bills Negotiable Book should be checked into the Head Office Account, for the purpose of ascertaining that the Head Office has been properly debited and credited with the amounts paid or received.

The Books containing the drafts issued on the Head Office and Letters of Credit should also be checked with the Head Office Account.

The balance of the Head Office Account should be agreed with the balance appearing in the Head Office books according to the statement sent over from the Head Office for that purpose.

If Current Accounts are kept, any Customers' Pass Books available may be checked with the Ledger.

Savings Banks.—The extracted list of balances should be checked independently of the office Staff. The balances shown in the Deposit Ledgers should be marked off consecutively, the Auditor's assistant taking the list of balances as prepared by the Staff and calling out the amounts entered therein. The total of this list should be checked and compared with the total liability shown by the account "Depositors" in the General Ledger, and the list should be certified by the Auditor to be correct.

The interest credited to depositors should be tested by certain accounts taken at random.

The balance at the close of the half-year or other period fixed for audit should be verified both as to cash in hand and the Treasurer's balance, or preferably the Secretary or Actuary should pay into the Treasurer's account all cash in hand at the close of each period. A reference to the Bank Pass Book should not be regarded as sufficient evidence of the balance in hand, but a formal certificate from the Treasurer or Banker should be called for.

No audit of Savings Bank Accounts can be considered complete unless it comprises an independent examination and comparison with the deposit ledgers of Depositors' Pass

Books as presented at the Bank. For this purpose the Auditors should frequently attend at the Savings Bank and should carry out the comparisons in question to such an extent as will ensure the examination of at least 10 per cent of the Pass Books extant in the course of the year.

The frequency of the audit is fixed by the Act at a minimum of once each half-year, but it should, if possible, be continuous as to examination of pass books, and the assets and liabilities should be examined in total each quarter. The periodical meetings of Trustees and Managers (or Committee of Management) should coincide with the periodical audits, and the Auditor should report direct to them.

The Auditor should examine the Accounts of the National Debt Commissioners for transfers, purchases, sales of stock, interest, etc., he should also ascertain that the statutory limits (if any) of yearly and total deposits are not exceeded.

In the case of Banks making special investments under Section 16 of the Act of 1863, the Auditor should verify the Securities held by the Bank for moneys advanced from the funds of the Special Investment Department, and should state in his Report the manner in which this has been done.

Discount Houses.—The Bills on hand should be checked with the Bill Books for the day previous to the audit, the additions of the Books checked, and the amounts compared with the entries in the Bill Balance Book.

The Securities belonging to the House should be compared with the Security List, and those appearing on the List as being in the hands of the Depositors or the Bank for safe custody should be checked with the receipts given by the holders of such Securities. The Securities held against Loans should be verified with the entries in the Contract Lists, and the amount of loan and security checked into the Summary.

The prices on the list should be checked with the Stock Exchange Official List of the day, so as to ascertain that the Loans are fully covered.

The balances of the following Ledgers should be checked—

“Deposits without Security” Ledger, including interest unpaid, constituting a liability in the Balance Sheet.

“Deposits against Security” Ledger, including interest unpaid, and constituting a liability in the Balance Sheet, the hypothecated securities, consisting of Bills discounted and Companies Securities, appearing *per contra* among the General Assets.

“Loans” Ledger, being the balances of amounts advanced by the House, including interest unpaid and covered by security.

“Security” Ledgers. These show the amount of security, including Bills discounted in the hands of Depositors against their deposits with the House.

The “Calendars” should also be checked, as they show the Bills due on each date and the amount rediscounted. They also furnish the particulars required for the Rebate Account, which shows the amount debited to the Profit and Loss Account, on account of discount on Bills discounted, which will mature in a later period. In the Statement for Rebate the daily amount of Bills falling due are entered, and the balances due after deducting the Bills rediscounted, the number of days from the date of the Balance Sheet to maturity, and the amount written back as rebate, calculated on the average rate of the discount agreed upon.

As regards the Bills discounted, the balances in the Ledger may be checked as follows: With the Bills on hand, with those held for collection, and those out for collection, with the Bills deposited as security, and with the Bills rediscounted as per the Ledger balance.

Railways.—The cost of all land purchased on which the Railway has been constructed, of laying the line, of the construction of stations, signal boxes, etc., can remain in the Capital Accounts, without being subject to a charge for depreciation, but care must be taken that, should any portion of the land be sold, the amount received must be applied towards the diminution of this Capital Account, and, should any station or other building be destroyed, or partly destroyed, for the construction of a new station, signal box, etc., the amount left in the Capital Account must be only the actual cost of the new structure. The amount

spent on the destroyed structure must be eliminated from this Account and charged against Revenue, although it would be permissible, perhaps, to spread this over a term of years.

In the case of other freehold or leasehold property held by Railways, the audit is subject to the same rules as those regulating the audit of the accounts of owners of landed estates or owners of house property.

It is impossible for an Auditor to check any kind of details in connection with the small items which are received daily by booking clerks, station masters, carriers, and agents, whether at home or abroad, but he must satisfy himself that there is a complete check over these in the Audit Office. All railway tickets are numbered consecutively, and have to be registered before they are sent to the different railway stations for issue ; all tickets surrendered at the end of each journey are sorted at the stations into numerical order and sent to the Audit Office. Inquiries have to be made as to missing tickets, and the stocks of tickets in hand at the various stations have to be counted on the balancing date and valued at the issued price.

A similar check has to be exercised over all receivers of parcels or merchandise, carried both by passenger and goods trains, both in respect of payments made in advance and of those payments which are made on delivery. The Auditor must also satisfy himself that the internal check is kept in connection with the issue of season tickets, deposits on season tickets, and all deposits in hand at the date of the Balance Sheet must be included in the Liabilities.

The Engineer is required to certify that the whole of the Company's permanent way, stations, buildings, canals, and other works have, during the half-year, been maintained in good working condition and repair, and the whole of such maintenance must be charged against Revenue Account, The Chief Engineer or the Locomotive Superintendent has to certify that the whole of the Company's plant, engines, tenders, carriages, wagons, machinery, and tools, also the marine engines of the steam vessels, if any, have, during the half-year, been maintained in good working order and repair,

and the whole of such expenditure must be charged against Revenue Account.

The Auditor should ascertain that the amounts carried to the credit of the Profit and Loss Account have been definitely earned and are not subject to any possible deductions on valuation, or require a reserve to be made. When the profits are represented by shares in other Companies, either as the result of promoting or of underwriting, the Auditor should recommend that such profits be treated in a separate Profit and Loss Account, and that only the profits earned on realization of such shares be carried to the General Profit and Loss Account, which shows the profit available for dividend.

Trust and
Finance
Companies.

He should also ascertain whether each Investment (whether Debentures or Shares) and Loan has yielded interest or dividend, as the Investments of Trust and Finance Companies are frequently non-dividend paying. In the case of Investments or Loans not producing Income, reasons should be required. Accrued interest on the Debentures of unquestionable Investments may be taken credit for.

Especial care must be taken when considering the value taken credit for in the Balance Sheet in respect of the Investments. When a Finance Company promotes Mines there is frequently no quotation for the shares of the new ventures, and when there is a quotation it may only apply to a small block of shares.

Brokers' Notes should be compared with the prices stated to have been paid for Stock or received on account of Stock sold, and also for the purpose of ascertaining that dividends and interest accrued on Stock has been accounted for.

Should there be any liability on the Shares held as Investments, the fact must be shown on the face of the Balance Sheet, or else referred to in the Auditor's Certificate.

Insurance Companies.—The books written up from the Agents' returns should be tested with some of the original returns.

Insurance
Companies.

The Auditor should ascertain that claims have been sent in up to the date of the Balance Sheet from all the Agencies, and if none from any Agency,

or if none for an unusual period from any Agency, he should inquire specifically into that Agent's Accounts.

He should also ascertain that the Agents' Commission has been charged in respect of all premiums taken credit for ; also that the Liabilities include all Premiums due to other Companies for re-insurances ; also for the accrued proportion of Annuities payable.

The Register of Investments would show the amount of each investment, and the date when the interest is payable. The Auditor should satisfy himself that all interest and dividends due have been received ; he should also ascertain that the accrued interest on Investments and on Loans taken credit for in the Balance Sheet has not been over-estimated.

Building Societies.—The Manager should be requested to send to the Members previous to each audit a notice asking them to send in their Pass Books for the purposes of the audit.

Building
Societies.

The cash in hand at the close of business on the date of the Balance Sheet should be counted.

The Pass Books, or selections from the Pass Books, if numerous, should be examined with the balances in the Ledgers.

The counterfoils of Deposits and other Receipt Books should be checked into Deposit and other Cash Books, and the Vouchers should be checked with the General Cash Book to test Commission on Advances on account of Shares for Balance Deposit Applications. Additions of Cash Books and Ledgers should be tested.

The Subscription Cash Books should be called over into the General Cash Book.

The Deposits received and paid from the Deposit Cash Book into the General Cash Book should be checked, also postings from the Cash Book into the General Ledger.

The balances of Investing Ledgers, Deposit Ledgers, and Advance Ledgers, should be checked into the Balance Book. Care must be taken that all the Ledgers come under the notice of the Auditor, and that new Accounts are not opened in Ledgers supposed to have been completed and out of use.

The Auditor should ascertain that rents have been received

from the properties in hand, also that no interest has been taken to credit of Revenue Account in respect of borrowers whose properties are in hand, unless proof is given that the security is ample to cover the balance.

The Auditor should see that the amounts received on deposit or loan does not exceed two-thirds of the amount secured to the Society by mortgages from its members.

The securities should be examined in accordance with the principles laid down in Chapter XV.

The Auditor should compare Parts 1 and 2 of the Schedule with the corresponding statement of the previous year, and if any property which had been in hand upwards of twelve months, according to that Statement, is omitted in the one under audit, ascertain whether it has been disposed of, also ascertain whether such of the properties included in Part 1 of the Schedule last year, and in hand, have been transferred to Part 2, if still then in hand.

Part 3 should also be compared with the Schedule of the previous year, so that if any "Advance" has been removed it can be inquired into by the Auditor. The Rent Ledger should be inspected in all these inquiries.

Breweries.—The Auditor should ascertain before the amount due from the debtors to the concern has been settled for the

Breweries. Balance Sheet, that discounts of every description have been deducted from the balances, or that full allowance, in the shape of reserve, has been made on the debit side of the Balance Sheet. The discounts allowed may vary in the case of certain of the tied houses or other customers, as there is often a trade discount allowed to private customers as well as the cash discount. The cash discount need not always be deducted as it is not always known whether the debtor intends to take advantage of prompt payment.

When loans are made to the tenants of tied houses, the Auditor should satisfy himself that the instalments and the interest which are usually charged against the Account, and the Account itself generally is liquidated in a regular manner, and that due allowance for losses likely to arise on realization of loans has been made.

If beer in process of manufacture is included in the Stock in the Balance Sheet, as it should be, the Auditor must ascertain that all purchases of material made use of have been charged against the Revenue Account among the purchases. The question of depreciation has to be gone into very carefully both as regards the various plant used in connection with the manufacture of beer and perhaps mineral waters, and also in connection with barrels. Depreciation in connection with the latter depends upon how repairs to the barrels are charged, as also the special depreciation in connection with motor transport vehicles and horses.

When the licences on freehold or leasehold public-houses have been extinguished by the Compensation Authority, the Auditor must ascertain that nothing is left on the credit side of the Balance Sheet as representing the value, from a licensed premises point of view, of any of these properties.

When Accounts are collected by draymen, the Auditor should ascertain that the "internal check" is efficient or else investigate the details himself.

The Auditor should generally satisfy himself that the stocks both of beer in casks, in bottle, and in course of manufacture, also the stocks of casks, empty bottles, etc., have been properly taken and not over-valued in the Balance Sheet.

Judicial Trustees.—In auditing the Accounts of Judicial Trustees, the Auditor should peruse the following documents, which, in accordance with No. 4 of the Rules under the Judicial Trustees Act, 1896, have to be supplied by the applicant for the use of the Court when making the application for the appointment of a Judicial Trustee—

Judicial
Trustees.

under the Judicial Trustees Act, 1896, have to be supplied by the applicant for the use of the

Court when making the application for the appointment of a Judicial Trustee—

A short description of the Trust.

Short particulars of the Trust property, with an approximate estimate of its income and capital value.

Short particulars of the incumbrances (if any) affecting the Trust property; also the complete Statement of the Trust property, accompanied with an approximate estimate of the income and capital value of each item, as required by Rule 8 to be furnished by the Judicial Trustee to the Court.

Solicitors.—Costs taken credit for should, in the absence of an Agreement between all the partners, include undebited

Solicitors. Costs as well as debited, but the Auditor must be satisfied that proper deductions have been made from both for the possibility of disallowances on taxation, and allowances which may be voluntarily made to Clients on settlement. Outstanding Fees to Counsel should be included in Liabilities.

Clients frequently appear in Solicitors' books as creditors owing to their having made payments on account of costs of pending actions, while they are really debtors, in consequence of Costs not having been delivered. Ledger accounts of this description must be adjusted.

Credit should be taken in respect of Premiums received from Articled Clerks for the proportion of the time expired under the Articles, leaving the balance on these Accounts in the debit side of the Balance Sheet.

Stockbrokers.—These books are balanced at every Account, and all balances carried down. The audit of the Accounts of a Stockbroker is one of the most troublesome description, and, to ensure absolutely the accuracy of the books, the following work is necessary—

CLIENTS' DEPARTMENT

Call the Balances from those of the previous "Account."

Call the Contango Journal to the Clients' Ledgers at the opening and the close of the "Account."

Call the Bought Journal to Clients' Ledgers.

Call the Sold Journal to Clients' Ledgers.

Call the Cash Book to Clients' Ledgers.

Call the Sundries Journal to Clients' Ledgers.

Call the Dividend Journal to Clients' Ledgers.

Call the Rights Journal to Clients' Ledgers.

JOBBER'S DEPARTMENT

Call the Balances brought over from the previous "Account" in Jobbers' Ledgers, if any, and check any differences adjusted in subsequent "Accounts."

Call the Contango Journal to the Jobbers' Ledgers at the opening and close of the "Account."

Call the Bought Journal to the Jobbers' Ledgers.

Call the Sold Journal to Jobbers' Ledgers.

Call the Cash Book to Jobbers' Ledgers.

Call the Sundries Journal to Jobbers' Ledgers.

Call the Rights Journal and Dividend Journal to Jobbers' Ledgers and examine the Dividend List to see the Dividends and Rights have been duly debited or credited.

Call the Clearing House Journal to Jobbers' Ledgers.

Call the "Names Clearing" Journal to Jobbers' Ledgers.

Call the Names Receivable Book to credit side of Jobbers' Ledgers.

Call the Names Payable Book to debit side of Jobbers' Ledgers.

See that the "Splits" have been properly charged and adjusted.

Call the Cash to Names Receivable Book.

Call the Cash to Names Payable Book.

Call the Dividend Journal to Names Books.

Call the Cash to Clearing House Journal.

STOCK DEPARTMENT

Check the Stock Ledger, so as to ascertain that, for all cash paid on account of Stock, Stock has been received from the Jobber and delivered to the Client, and that, for Cash received, Stock has been received from the Client and delivered to the Jobber and *vice versa*; and generally agree the transactions in Stock with the Clients' Ledger Accounts.

Go through the Ledgers and ascertain that the Shares on the two sides of all the Accounts agree, i.e. on one side the Stock carried over *plus* the purchases must agree with the Stock sold *plus* the Stock carried over at the end of the "Account." Any difference found must arise from deliveries of Stock, which should be vouched by the Stock Ledgers.

Examine the Carry-over Account with the Securities for the purpose of ascertaining that all Stock taken in for Clients is in the hands either of the Broker or his Bankers,

Call Impersonal Accounts, including Splits, Stamps and Fees, Postages, Interest, Commission, Partners' Drawings, and Expenses Accounts from Cash Books, Journals, etc., into the Private Ledger.

It has to be borne in mind that the Stock carried over, taken in, etc., is constantly changing, so that it can only be effectually vouched by tracing the deliveries and the cash received or paid through the books.

Single Ship Companies.—The Articles of Association and Agreements with Managing Owner, Captain, etc., should be perused and notes made of any matter affecting the Accounts.

Single Ship
Companies.

The usual financial books to be examined are the Income Journal, Expenditure Journal, Bills Payable Book, Bills Receivable Book, Cash Book, and Ledger; but in some cases an ordinary Journal takes the place of the specially ruled Journals, and some Companies use only the Cash Book and Ledger.

The Auditor should ascertain that no expenditure is added to "Purchase of Ship" Account when the final payment has been made to the Vendor and the total first cost has been divided into sixty-four shares. The "Voyage" Account should contain all payments made for outfit, insurance, disbursements at each Port abroad, expenses at Port of discharge inwards, Captain's emoluments, and the Managing Owner's Commission, and vouchers for the Outfit Account, and the Agents' Accounts from the various Ports abroad should be produced. The Vouching is a very important part of the audit, as they may come from several sources, such as the Managing Owner, the Captain, the Home Agents, the Foreign Agents, and the Underwriters or Insurance Companies; there may also be sundry other receipts. The correctness of the Foreign Exchange and the calculations should be ascertained.

The "Voyage" Account should be credited with outward freights, freights received abroad, homeward freights, forfeited wages from the Portage Bill, sales of stores, Port charges refunded, etc. The accounts for the whole period

under audit should be examined to ascertain whether the freight of every voyage has been included from the date of the last Account. For this purpose the Auditor should ask for the production of the chart showing the movements of the steamer, while the rate of freight can be ascertained by the Charter-party. Demurrage can be verified from the Captain's Time Accounts, correspondence, or Log Books. The "Captain's" Account should be charged with advances to the crew, their wages, cash to himself, and payments on account of his outfit; on the other hand, it should be credited with the Portage Bill, after deduction of forfeited wages, his disbursements abroad, and the remuneration, which should be in accordance with his Agreement.

By an examination of the Policies of Insurance and special clauses therein it can be ascertained if the ship has been fully protected, and that Returns for risks, such as laying up, not incurred, and unexpired time have been credited.

No profit should be taken to credit in respect of an uncompleted voyage.

The Auditor should search the Customs Registry Office, to ascertain if there is any mortgage on the ship.

When several Companies are in one office, the office expenses should be divided on some equitable basis.

Mines, Collieries, etc.—Special care has to be taken to ascertain that expenditure of various sorts has been fully charged against Revenue. "Development" expenditure is apt, in the absence of severe criticism by the Auditor, to appear on the credit side of the Balance Sheet, when it should be charged against Revenue. (For Special Remarks on this subject see Chapter XII.) Shafts are only of value so long as the minerals to obtain which they were sunk are workable by means of that shaft, and the cost of sinking should be charged gradually against Revenue, so that when the shaft is abandoned it is not represented by any expenditure on the credit side of the Balance Sheet. The same remark applies to Tramway Lines laid underground, to enable the seam distant from the bottom of the shaft to be more economically worked.

Pit Timber is very perishable, and should be entirely charged against Revenue as used, unless very satisfactory reasons are given to the Auditor for leaving a balance on the credit side of the Balance Sheet.

Credit must not be taken in the Balance Sheet for Dead Rent paid in respect of any time so far back as to render it not recoupage out of Royalties. Royalties should be charged in respect of all minerals taken credit for, either sold or in stock.

When Wagons are held on a Hire-Purchase Agreement, the Auditor should ascertain that a full proportion of the periodical payments have been charged against Profit and Loss. If there are any Agreements with Railway Companies, he should ascertain that due provision is made for Liabilities in respect thereof. The Stock of Minerals should be valued for the Balance Sheet at the cost of getting, including the Royalties, the Wages, as ascertained from the Pay Sheet, etc. Depreciation in respect of Lease, Plant, Wagons, Private Railway, etc., should be charged against the Profit and Loss Account.

Co-operative Stores.—Some of the Invoices for purchases should be compared with the Receiving Sheets and Invoice Journal, for the purpose of ascertaining that the goods paid for have been actually received, and have been charged to the Purchases Accounts of the various departments. This will also prevent goods received being sold or taken into stock before the Department has been charged with the purchase; it will also be a check on the Departmental Purchases (if any) in cases where a separate book is not kept for the purpose.

As regards Sales, certain of the duplicates of the bills handed to customers should be compared with the Abstract prepared by each Salesman, and the totals of the Abstracts should be traced in the "Dissecting" Journal, and thence to the Cash Book. Should there be any credit sales, some of the duplicates should be checked with the Journal reserved for each Sales Ledger.

Estate Accounts.—The Rent Roll should be examined with the Terrier for the purpose of ascertaining that the

Agent has included the whole of the properties in the Rent Roll, or accounted for those stated to be unlet.

At the first audit, Leases should be perused
 Landed Estates. for the purpose of ascertaining the actual rentals agreed to be paid; in future audits it will be sufficient to refer to the previous Rent Rolls, and to the Leases granted since that date.

The Agent should produce some authority from the Landlord for reductions or allowances, and where houses are allowed free of rent to any of the employees, as part of their salaries or wages, or to pensioners, a list, certified by the Landlord, should be placed before the Auditor.

The arrears brought forward into the new Rent Roll should be compared with the arrears at the closing of the previous Rent Roll.

For Manors the original Statement received at the Estate Office from the Stewards (if any) should be examined. Where mining property is held, the amounts received from the Lessees of the mines for royalties should be compared with the Certificates of the Landlord's Mining Surveyor or Check Viewer.

Miscellaneous receipts, such as sales of Timber, Stock, Dairy Produce, Game, etc., should be checked by the production of the Auctioneers' Accounts, or by Tickets taken from a Counterfoil Book kept by the Foreman of each Department, and sent to the Office.

The Auditor should ascertain that all buildings, stocks, farm implements, etc., are insured, and that the Premiums are paid.

Executors and Trustees.—The usual Accounts submitted to Auditors will be found in Chapter VII. In auditing the Cash Book, the Auditor should ascertain that
 Executors and Trustees. all amounts due to the Testator at the date of his death have been collected, or obtain an explanation as to those not received. He must also be satisfied that dividends and interest on investments, rents and other income have been accounted for; while, as regards payments, he should require the vouchers, including Broker's Contract

Notes, to be produced, and also ascertain that all payments are duly authorized by the Will or are otherwise legal. Before certifying any Accounts which are intended to relieve the Executor or Trustees, the Auditor should ascertain that all payments directed by the Will, such as debts, legacies, etc., have been made, and that all duties have been paid.

After payment of the funeral and testamentary expenses, the payment of the debts is subject to the following rules of priority—

1. Debts due to the Crown.
2. Debts having priority by Statute.
3. Debts of record, e.g. judgments and recognizances.
4. Specialty and simple contract debts.
5. Voluntary bonds.

When an estate is not sufficient to pay all debts and legacies it must be applied in the following order, which is known as “marshalling” the assets—

1. Personalty not bequeathed, or only bequeathed by way of residue.
2. A real fund, created specifically for payment of debts.
3. Real estate devised for payment of debts.
4. Real estate not specifically devised.
5. Real or personal estate devised or bequeathed subject to payment of debts.
6. General pecuniary legacies.
7. Real or personal estate specifically devised or bequeathed.
8. Real or personal estate which the Testator had power to appoint, and which he appointed by his Will.
9. The paraphernalia of the Testator's widow.

The expression “Testamentary Expenses” in a Will includes the estate duty in respect of the personal property of which the Testator or other person whose “Testamentary Expenses” are referred to was competent to dispose of at his death.

A direction for the payment of “Testamentary Expenses” may extend to the expenses of administration under an intestacy.

A Testator by his Will gave his residuary estate to Trustees upon trust to convert and to invest the net proceeds and pay the income to his wife during her life ; and after her decease he directed his Trustees, after paying his widow's funeral and " Testamentary Expenses " and debts, to apply his residuary estate as therein mentioned. The testator's wife survived him, and signed a document which purported to be her Will. After her death the plaintiff and her brother, who were in the same relationship to the widow and were her next-of-kin, disputed the Will, and the brother brought an action in the Probate Division to have a grant of administration to the estate of the widow made to him. The Court pronounced against the alleged Will, but made no order as to costs. Letters of administration to the widow's estate were subsequently granted to the plaintiff with the assent of her brother.

Held, that the direction for payment of the " Testamentary Expenses " of the Testator's widow extended to (1) the costs and expenses of the plaintiff in obtaining the letters of administration, and in connection with the administration of the estate of the widow ; (2) the costs of the brother of the action in the Probate Division ; and (3) the estate duty payable on the death of the widow in respect of her personal property.—*In re Clemow ; Yeo v. Clemow* [1900], 2 Ch. 182.

Where a Testator empowers the Trustees of his Will to invest moneys in (amongst other things) the " Stocks, Funds, and Securities (not payable to bearer) of any Corporation or Company, Municipal, Commercial, or otherwise," the clause does not confine the Trustees to the Stocks, Funds, and Securities of Corporations and Companies formed or registered in the United Kingdom.—*In re Stanley ; Tennant v. Stanley* [1906], 1 Ch. 131.

The plaintiff's costs of an unsuccessful action impeaching the validity of a Will, though ordered by the Judge of the Probate Division to be paid out of the Testator's Estate, are not testamentary expenses.—*In re Prince ; Godwin v. Prince* [1898], 2 Ch. 225.

Settlement Estate Duty on personalty is not a testamentary expense, although the executor is accountable for it. It is,

therefore, payable out of the settled property under the Finance Act, 1896, Sec. 19, Sub-sec. (1), notwithstanding a direction in the Will to pay testamentary expenses out of residue.—*In re King; Travers v. Kelly* [1904], 1 Ch. 363.

Estate Duty payable in respect of real estate is not a "testamentary expense" within the meaning of a direction contained in the Will of a Testator who died after the Land Transfer Act, 1897, for payment of his debts, funeral and testamentary expenses, out of his personal estate.—*In re Sharman; Wright v. Sharman* [1901], 2 Ch. 280.

A Testatrix having directed the Executors and Trustees of her Will to pay her testamentary expenses, bequeathed (*inter alia*) certain specific personalty, over which she had a general power of appointment, to her Trustees upon trust for certain specific legatees. She devised and bequeathed her residuary real and personal estate to her Trustees upon trust for sale and conversion, the net proceeds to be paid to certain residuary legatees.

It was held by Swinfen Eady, J., that the appointed fund had passed to the Executors "as such" within the meaning of the Finance Act, 1894, Sec. 9, Sub-sec. (1), so that the Estate Duty was payable out of residue. *Held* also that the Will itself imposed this duty on the residue, the residuary estate being what remained after satisfying the previous dispositions of the Will, including the direction to pay testamentary expenses, which covered Estate Duty.—*In re Fearnside; Baines v. Chadwick* [1903], 1 Ch. 250.

A Testatrix by Will settled certain real property upon several persons in succession, and directed her Trustees to stand possessed of her residuary personal estate upon trust to pay (amongst other things) the Estate Duty on the whole of the real and personal estate devised and bequeathed by her Will. It was held that "Estate Duty" included "Settlement Estate Duty."—*In re Leveridge; Spain v. Lejoindre* [1901], 2 Ch. 830.

A Testatrix, after giving a specific legacy on trust by way of settlement, directed that her debts, funeral and testamentary expenses, "including all duties payable by law"

out of her estate, and including the duties on certain annuities given by her Will, and on all legacies bequeathed by her duty free, should be paid out of funds which she designated. She then directed certain legacies to be paid out of these funds free of duty. It was held that the special direction in the Will for payment of duties payable by law out of the Testatrix's estate referred to duties which by law were payable out of the general residuary estate of the Testatrix, and not to duties which by law were made payable out of specific property, and that therefore the direction did not amount to such an express provision as was required by Section 19 of the Finance Act, 1896, in order to make the Settlement Estate Duty payable otherwise than out of the settled legacy. *Held* accordingly, that the Settlement Estate Duty payable in respect of the settled legacy must be paid thereout.—*In re Lewis; Lewis v. Smith* [1900], 2 Ch. 176.

Where a general power of appointment over a fund is exercised by Will, the appointed fund does not pass to the Executor as such; consequently, the Estate Duty in respect thereof (in the absence of any direction in the Will to the contrary) is payable out of the fund; but such Estate Duty falls within the description of testamentary expenses; consequently, where the Will contains a direction to pay testamentary expenses out of the residue, the Estate Duty in respect of the fund is payable out of the residue.—*In re Treasure; Wild v. Stanham* [1900], 2 Ch. 648.

This decision of Kekewich, J., was not followed by Buckley, J., in *In re Moore; Moore v. Moore* [1901], 1 Ch. 696, but was followed by Byrne, J., in *In re Power; In re Stone, Acworth v. Stone* [1901], 2 Ch. 659. It was referred to by Kekewich, J., in *In re Sharman; Wright v. Sharman* [1901], 2 Ch. 280, and followed by him, in *In re Maddock; Llewelyn v. Washington* [1901], 2 Ch. 372.

When pecuniary legacies or shares of the residue of a testator's personal estate are settled by his Will, no part of either the Estate Duty or the Settlement Estate Duty imposed by the Finance Act, 1894, is to be borne by the settled legacies or shares, but the whole of those duties must be borne

by the general residue.—*In re Webber; Gribble v. Webber* [1896], 1 Ch. 914.

Simple contract debts cannot be paid in preference to specialty debts in the case of an insolvent estate.—*In re Hankey; Cunliffe Smith v. Hankey* [1899], 1 Ch. 541.

The commission charged by an estate agent for procuring a lease of settled land for a tenant for life under the Settled Land Act, 1882, is payable out of capital money arising under the Act.—*In re Maryon-Wilson's Settled Estates* [1901], 1 Ch. 934.

The income fee payable to the Public Trustee in respect of Life Annuities bequeathed by a Will is payable out of those Annuities and not out of residue.—*In re Bentley; Public Trustee v. Bentley* [1914], 2 Ch. 456.

A bequest of "moneys owing to me at the time of my decease" has been held to include moneys on deposit at a Testator's bank, whether notice of withdrawal is or is not required in respect of the same—*In re Derbyshire; Webb v. Derbyshire* [1906], 1 Ch. 135.

A Testatrix specifically bequeathed all the "stocks, shares, debentures, debenture stock, and all other securities which shall be standing in my name at my decease." At her decease the Testatrix was possessed of Foreign Government Bonds to bearer, which, together with certain stock certificates, were kept by her bankers in an envelope marked outside with her name and also with a reference to the page of a safe custody register kept by the Bankers on which the securities were entered under the heading of her name—

Held, that the Bonds to bearer were not included in the specific bequest.—*In re Mayne; Stoneham v. Woods* [1914], 2 Ch. 115.

Interest on advances made by the Trustees under a Will which has to be brought into hotchpot must be calculated at the rate of 4 per cent. per annum.—*In re Davy; Hollingsworth v. Davy* [1908], 1 Ch. 61.

When a Testator empowers the Trustees of his Will to invest in the Stocks, Funds, and Securities of "any Corporation or Company, Municipal, Commercial, or otherwise,"

the words " Corporation or Company " mean an incorporated body or unincorporated body which is " Municipal, Commercial, or otherwise," and which is of such a kind as not to be what is commonly called " a Firm." The word " Company " has no strictly technical meaning. It involves two ideas, namely : first, that the association is of persons so numerous as not to be aptly described as a Firm ; and, secondly, that the consent of all the other members is not required to the transfer of a member's interest.—*In re Stanley ; Tennant v. Stanley* [1906], 2 Ch. 131.

When Trustees hold shares of a Company belonging to the trust, and they are appointed Directors of the Company in respect of such holding, and there is no provision in the Will enabling them to retain their remuneration as such Directors for their own benefit, they must account for such remuneration to the trust, and the remuneration is to be treated as Capital, and will go to the Remaindermen as an accretion to their shares.—*In re Francis*, 92 L.T. 77.

A Testator directed payment out of the income of his estate of £200 per annum " free of all duties " to a Solicitor-Trustee for his trouble in acting as a Trustee of his Will, so long as he should continue to act as such Trustee, and also in addition gave him power to charge and be paid for professional and other charges—

Held, affirming the decision of Neville, J., that the sum of £200 was to be paid subject to and not free of Income Tax.—*In re Saillard ; Pratt v. Gamble* [1917], 2 Ch. 401.

One of the most important duties of an Auditor in connection with this class of audit is to ascertain that proper adjustments have been made between Capital and Income, and to this end he must bear in mind the Sections of the Apportionment Act, 1870 (*see* Chapter IV).

It is impossible to refer to all the cases which have been decided in the Law Courts, but in addition to those contained in Chapter IV, the following may be perused with interest.

A Testator who died in December, 1913, bequeathed his residuary estate to Trustees upon trust to pay the Dividends and income thereof to his wife for life, and after her death

to stand possessed of the residuary estate in trust for his nephews and nieces. The widow died on 24th July, 1915. Part of the residuary estate consisted of stocks in three Railway Companies. In September, 1915, each of these Railway Companies declared a dividend, payable about a month afterwards, for the half-years ending on the preceding 30th June, 1915—

Held, that the Apportionment Act, 1870, applied, and the estate of the tenant for life was entitled to the whole of these dividends.—*In re Oppenheimer* [1907], 1 Ch. 399 followed.

Whenever there are periodical payments accruing when the event calling for apportionment occurs, the Act is at once brought into operation and must be applied, and when, subsequently, the accruing payments become due and payable they must be distributed in accordance with the Act as applied on the occurrence of the event which brought it into operation.—*In re Muirhead; Muirhead v. Hill* [1916], 2 Ch. 181.

By her will, a Testatrix who died in 1915 gave her residuary estate upon trust to pay or apply any part of the income thereof towards the maintenance and education or otherwise for the benefit of her granddaughter F. until she attained twenty-one or married, and, if she attained twenty-one without having previously married, to pay the income to F. during her life, and, if she married before or after attaining twenty-one, to pay the income of one moiety of the residuary estate to F. during the remainder of her life, and to pay or apply the income of the other moiety towards the maintenance of J. and after the deaths of F. and J. respectively, to hold the respective moieties upon trust for their children respectively. F. married in 1917 and attained twenty-one in 1918—

Held, that the accumulations of unapplied income of the residuary estate existing at the date of the marriage formed part of the capital of the residuary estate, and did not pass to F.—*In re Woolf; Public Trustee v. Lazarus* [1920] 1 Ch. 184.

Shares in a Company were settled upon trust to pay A during her life “the interest, dividends, share of profits or annual proceeds,” and after her death in trust for her children. The deed of settlement of the Company provided that, by the vote of the majority, out of the half-yearly profits a dividend

might be declared, and a sum reserved for such contingencies as the Directors should specify. During A's lifetime an addition of three new fully paid-up shares to those already held in trust for her was made, pursuant to a resolution passed at a general meeting of the Company to apply a portion of "the net earnings during the half-year" to necessary works, and issue new shares to represent the money so applied, a dividend being declared out of the remaining portion of the earnings.

It was held that these new shares were capital, and not income, as between the Tenant for Life and those entitled to the remainder.—*In re Ezekiel Barton's Trust* [1868], 5 Eq. 244.

The Capital of a Company was divided into 10,000 shares of £10 each, of which 3,728 shares only had been issued and were fully paid-up. The Company was very prosperous, and the market value of its shares was 30s. each. In February, 1912, the Reserve Fund of the Company exceeded £50,000, and the Directors proposed a scheme for distributing part of the Reserve Fund, representing accumulated undivided profits, amongst the shareholders, so that every shareholder would get a bonus of one new fully-paid £10 share for every existing share held by him. Accordingly, resolutions were passed by the Company (a) empowering the Directors to declare a bonus dividend out of the Reserve Fund, and (b) sanctioning the distribution of a bonus dividend of £10 per share out of the Reserve Fund, authorizing the further issue of 3,728 shares of £10 each out of the unissued capital of the Company to be allotted *pro rata* amongst the existing shareholders, and directing that such new shares be paid up in full forthwith. The Directors then sent a circular letter to every shareholder with a warrant for the bonus dividend on his shares, informing him of an allotment to him of his proportion of the new shares and giving him an option to accept or refuse the allotment, and stating that if he accepted the allotment he was to indorse and return the dividend warrant to the Company to be applied in payment of the new shares. The Trustees of a Testator's Will held 200 shares of the Company and, on receipt of the circular letter, accepted their allotment of 200 new shares, indorsed and returned their bonus dividend warrant for £2,000,

and afterwards sold the new shares at a profit. The question then arose, whether as between the Tenants for life and the Remaindermen under the Will, the bonus dividend was capital or income—

Held, on the evidence, that the Company intended to capitalize the Reserve Fund and not to distribute it as a bonus dividend, and therefore that the whole of the bonus dividend was capital of the Testator's estate.—The principle of *Bouch v. Sproule* [1887], 12 App. Cas. 385, applied. *In re Evans; Jones v. Evans* [1913], 1 Ch. 23.

In a case where a Testator bequeathed his residuary personal estate to his Executor in trust for the Testator's wife for her life, and after her death to his Executor part of the residuary estate consisted of shares in a Company whose Directors had power before recommending a dividend, to set apart out of the profits such sum as they thought proper as a Reserve Fund for meeting contingencies, etc. After the Testator's death the Directors of the Company distributed certain accumulated profits (which had been temporarily capitalized) as a bonus dividend, allotted new shares (partly paid up) to each shareholder, and applied the bonus dividend in part payment of the new shares. It was held by the House of Lords that looking at all the circumstances, the real nature of the transactions was that the Company did not pay or intend to pay any sum as dividend, but intended to and did appropriate the undivided profits as an increase of the capital stock; that the bonus dividend was therefore capital of the Testator's estate, and that the Life-Tenant was not entitled to the bonus or the new shares.—*Bouch v. Sproule* [1887], 12 App. Cas. 405.

A Testator bequeathed three Annuities charged upon the income and Corpus of his residuary estate. The whole of his estate was settled in strict settlement upon his son and grandson. The income was insufficient to keep down the Annuities, and £19 4s. 7d. was raised out of capital to satisfy the Annuity of the first annuitant, who died in 1911. Sums amounting to £32 3s. 10d. had also been paid out of capital to the two surviving annuitants. It was now anticipated that there would be a surplus income in the hands of the Tenant for Life after

satisfying the Annuities. On a summons by the Trustees of the Will to ascertain whether this income should be applied in recouping to capital the sums raised thereout, or either of them—

Held that, having regard to the decision in *Prince v. Cooper* [1853], 17 Beav. 187, and to the fact that the Annuities were charged upon capital as well as income, the Tenant for Life could not be called upon to replace the deficiency raised out of capital.—*In re Croxon; Ferrers v. Croxton* [1915], 2 Ch. 290.

A Testator gave his residuary estate upon trust for sale and conversion with a discretionary power to postpone sale and conversion, and directed the net proceeds of sale to be invested on trust securities and held in trust for his wife for life with remainder to his sons. The Will contained no direction as to the income of the estate pending conversion. The estate consisted largely of unauthorized securities, some of which were non-dividend paying and some paid more and some less than 4 per cent interest—

Held, that the Tenant for Life was entitled as from the death of the Testator to interest at 4 per cent. on the capital value of the unauthorized securities to be calculated, not on each of the unauthorized securities separately, but on the aggregate value of all the unauthorized securities; and that if in any year the Tenant for Life on that basis received more than the actual income of the unauthorized securities, the overpayment must be adjusted out of her subsequent income.—*Slater v. Owen* [1912], 1 Ch. 519.

The Auditor in certain cases has to ascertain that the Tenant for Life of a Testator's residuary personal estate should only receive the income of the true residue. In other words, he must be careful to ascertain that the Life Tenant does not receive the income of capital to which he is not entitled and which is legally required to pay the debts of the Testator, legacies, and certain other payments. For this purpose he must make himself acquainted with what is known as the rule in *Allhusen v. Whittell* and see that it has been followed. The rule is to the following effect. It must first be ascertained what is the amount of capital of the Testator at the date of his death plus the gross income, including income accrued,

of the first year succeeding the Testator's death. This will practically form the total fund which, when ascertained, is available for the payment of debts, legacies, and other deductions. Secondly, there must be ascertained the amount that may be required to pay such deductions (which do not form any part of what may be described as the true residue to which the Tenant for Life is only entitled). The proportion of the income of the first year attributable to the secondly ascertained amount will be according to the ratio the sum required to pay debts, legacies, etc., bears to the total fund available for the payment thereof. In other words, the Life Tenant of residual personal estate is not entitled to any income from the portion of the estate which is required for the payment of the Testator's debts, funeral, testamentary expenses and immediate legacies.

The following cases bear on this rule—

The Rule laid down in *Allhusen v. Whittell* [1867], *L.R.* 4 Eq. 295, that in adjusting the Accounts between the Tenant for Life of the residuary estate of a Testator and the Remaindermen the Executors must be taken to have paid the debts and legacies not out of capital only or out of income only, but with such portion of the capital as, together with the income of that portion for one year from the Testator's death, was sufficient for the purpose—although it worked perfectly in that case and works equally well in any case where the capital subtracted from the gross estate before the ascertainment of residue is not subtracted before the end of the first year from the Testator's death, is not to be slavishly followed in every administration where residue is settled, and is inapplicable in hard and fast terms to a case where the subtractions from the estate occur at periods substantially anterior to the close of the first year.

A Testator died on 6th February, 1911, having by his Will given legacies to be paid free of all duty, and given his residuary estate as to each of four-fifths thereof in trust for one of certain persons for life, with remainder to his or her children. The Executors paid the estate duty, legacy duty, legacies and debts at various dates during the year immediately succeeding the Testator's death, for instance, over £47,000 for estate duty

on 1st April, 1911, legacy duty of £1,370 on 1st July, 1911, legacies of about £14,000 in June and July, and debts and funeral expenses amounting to nearly £600, in May, 1911—

Held (1) that the equitable book-keeping or mode of adjustment to be adopted, on taking the Account of the share of income during the year succeeding the Testator's death due to the Tenants for Life, was that there should be charged against them, in respect of the payments for estate duty, debts, funeral and testamentary expenses, and duty on legacies given free of duty, interest upon the capital sum which would, with such interest, make up the sums paid in respect of estate duty, etc., such interest being calculated only during the respective periods from the death of the Testator until the respective times when the sums paid for estate duty, etc., were in fact paid; and (2) that the method of adjustment adopted in this particular case was not the only method available, and that extremely elaborate and minute calculations need not be gone through, in every case.—*In re McEuen; McEuen v. Phelps* [1913], 2 Ch. 704.

A Testator gave his real and personal estate not thereby otherwise disposed of, therein called his residuary estate, to his Trustees in trust to sell, and out of the proceeds pay or provide for debts, funeral and testamentary expenses, legacies and annuities, and duties, and to divide the residue into nine equal shares, and to invest and pay the income of one-ninth share to each of his three daughters during her life with remainders over, and (by Clause 15) the Testator empowered his Trustees to postpone the sale and conversion of all or any part of his real and personal estate as long as they should think proper, and directed that the income from his estate however invested should, after his death, be treated as income, and no part thereof should be added to capital. Testator died in 1909, leaving an estate of great value. The payments required to be made out of his residuary estate in respect of debts, legacies, duties, etc., were not concluded till the expiration of five years from the date of the Testator's death. The average rate of interest earned by the estate in each of these five years varied

considerably. On an originating summons raising the question how the Accounts ought to be adjusted between the Tenants for Life and the Remaindermen of the daughters' settled shares of residue—

Held, that the direction contained in Clause 15 of the Will did not displace the rule in *Allhusen v. Whittell* [1867], *L.R.* 4 Eq., 295, and *In re McEuen* [1913], 2 Ch. 704.

Held, also, that the true principle was to deprive the Tenant for Life of the income of such a sum as together with interest thereon from the date of the Testator's death down to the date of payment, was sufficient to satisfy the liabilities.

Held, also, that the principle was not limited to the payments made during the first year from the Testator's death, but applied equally to payments made during the subsequent years.

Held, also, that the average rate of interest earned by the estate in each year ought to be adopted for the purpose of this calculation.

Held, also, that as regards estate Duty the total amount paid for duty and interest thereon ought to be treated as the debt or liability to be paid or discharged.—*In re Wills; Wills v. Hamilton* [1915], 1 Ch. 769.

The Auditor has also to satisfy himself that the investments made by the Trustees of a Will or by an Administrator are in accordance with the terms of the Will, and generally in accordance with Law.

By his Will a Testator empowered his Trustees to invest any part of the trust estate upon “the debentures or debenture stock, or preference stock of any Railway or other Company in the United Kingdom”—

Held, that inasmuch as there was a distinction, although a minute one, between the two classes of investments described as preference stock and preference shares, it was not within the power of the Trustees to invest any part of the Trust Estate in the fully-paid preference shares of any joint stock Company.—*Spencer v. Wills* [1911], 2 Ch. 563.

Municipal Corporations.—All the Accounts of the Corporation should be audited with the exception of the Accounts of the Local Education Authority.

Municipal Corporations. If the audit is continuous, the Auditor should attend monthly at the Office of the Borough Treasurer and report to the Finance Committee upon the receipts and payments for each month.

The Auditor should, at the monthly audit, satisfy himself as to the accuracy of all the Accounts passed during the month by the departmental Committees and of the Accounts to be passed by the Finance Committee, and should not pass for payment any departmental Account unless the same has been authorized by the responsible Committee of the Corporation and unless such Account is shown in the monthly schedule signed by the Chairman of the meeting at which the Accounts were passed and also duly initialed by the departmental officer, the Borough Treasurer and the Chairman of the meeting. The Auditor should initial all Accounts submitted to him.

The Auditor should certify that the whole of the payments entered in the Monthly Accounts Book—in which the departmental schedules are summarized—are correct or otherwise, and that all receipts entered therein have been entered in the respective Cash Books and paid to the Bankers of the Corporation and should report thereon, generally, to the Finance Committee every month.

He should examine and certify the schedule of cheques to be deposited with the Bankers with the necessary authority to them to pay such cheques upon the signature of the Borough Treasurer and also examine and certify the schedule of cheques drawn by the Borough Treasurer between each meeting of the Finance Committee for wages, instalments on account of contracts, loans, and other Accounts which the Borough Treasurer is authorized to pay.

He should also examine and certify to the accuracy of all Wages Books and Petty Cash Books monthly.

The Auditor should audit all the Books of Accounts of the Corporation in every department, and satisfy himself that all

sums due to the Corporation from whatever source, including rates, chief and property rents, tolls, fees, fines, water rates, electricity charges, tramway receipts, etc., have been accounted for. He should also satisfy himself that all sums written off as irrecoverable, or as abatements, have been duly authorized by the Corporation or by the Finance Committee thereof.

At the final audit for the year, the Auditor should satisfy himself that all loans raised during the year have been in accordance with the borrowing powers of the Corporation, and that proper provision regarding Sinking Funds and Loans Funds, and any other requirements as to the repayment or extinction of debt have been complied with.

The Securities for all investments belonging to or made by the Corporation should be examined, and the Auditor should satisfy himself that they are in order and properly shown in the Books of the Corporation.

He should also inquire into the nature of all items of expenditure and ascertain that these are correctly allocated as between capital and revenue.

The Abstract of Accounts for the year prepared by the Borough Treasurer must be audited and reported on, and on the completion of the audit the Auditor should report thereon generally to the Finance Committee and especially :

(a) That separate accounts of all trading undertakings have been kept and that every charge which each ought to bear has been duly debited.

(b) That, in his opinion, the Abstract of Accounts presents a true and correct view of the transactions and results of trading for the year.

(c) That due provision has been made out of revenue for the repayment of loans and that all items of income and expenditure and all known liabilities and assets have been brought into account, and that the value of all assets has, in all cases, been fairly stated.

In some audits of this nature, the Auditor is required to express an opinion upon the necessity of Reserve Funds and

all amounts set aside to meet depreciation and obsolescence of plant in addition to the statutory Sinking Funds and the adequacy of such amounts.

Newspapers.—Ascertain that a Reserve has been created in respect of amounts received prior to date of Balance Sheet for prepaid Advertisements in respect of Advertisements not inserted, and also for periodical subscriptions for the Newspaper itself.

Ascertain that the payments in respect of contributions which have appeared in the Newspaper to the date of the Balance Sheet have either been paid or included in the liabilities.

Ascertain that the amounts have been credited to Agents in respect of Newspapers charged to them in their Accounts but returned as unsold.

Theatres.—Check the weekly Treasury Sheets with the vouchers and each weekly total into the Treasurer's Analysis Book, from which the expenditure is posted to the proper Ledger Account, also ascertain that all expenses are properly chargeable against the Theatre, and not against the Artistes. The balance as shown in the last Treasury Sheet of the year should agree with the Treasurer's balance as shown in his account in the Ledger.

Ascertain from the Daily Box Office Returns that the money has been paid into the Bank. There should not be any debtors in respect of Seats, except from the Libraries; the amount stated to be due from the Libraries should be checked by their own returns.

Ascertain that the amounts taken credit for in the Balance Sheet in respect of "Cost of Production" only include the actual cost of Scenery and Dresses, or, if it includes any other items, such as Salaries, Gas, etc., that these can be hypothecated to rehearsals, and are not in respect of the ordinary current business of the Theatre.

Where there are tours in the Provinces, the weekly Returns signed by the Manager of the tour should be checked by the Vouchers.

Clubs.—Ascertain from List of Members that each Member's

subscription has been accounted for in the Cash Book. (In some Clubs there are several classes of Members, such as Town, Country, and Supernumerary.)

Ascertain that Entrance Fees of newly-elected Members are accounted for, also any Special Fees payable on election, such as to Library or Political Funds. The Auditor should also satisfy himself at each audit that these Special Fees are appropriated to the proper funds, and not mixed with the general income.

Ascertain that the Stock of Wines, Cigars, Mineral Waters, Playing Cards, etc., have been properly taken, and obtain Certificates from persons responsible for the Stock-taking.

Ascertain that Wines the property of Wine Merchants are not included in the Stock stated to be the property of the Club.

Schools and Colleges.—Ascertain from the List the number of Undergraduates or Boys during each term, and that the proper Fees chargeable in respect of each

Colleges and Schools. have been received or brought into Account. Ascertain that any amounts received in advance of the date of the Balance Sheet for Tuition Fees are reserved, so that they will appear in the Revenue Account in respect of the term for which they are paid.

Ascertain that all extras charged have been received, or included amongst the debtors.

The debit side of the Balance Sheet should include the unexpended balance of "Caution Money," and no portion of this fund should be taken to credit of Revenue until the Auditor is satisfied that no claim thereon is likely to arise.

If lands or houses are owned, the audit of the books relating thereto will be of the same nature as the audit of other Estate Accounts.

CHAPTER XIV

PROFITS OF A COMPANY AVAILABLE FOR DIVIDEND

THE Directors, not the Auditor, recommend payment of Dividends—Definition of Profit—Four Systems of Account for Ascertainment of Profits of a Company—The Single Account System—The Double Account System—The Third System—The Fourth System—Limited Dividends of Gas and Water Companies—Arrears of Dividend—Income on Yearly and Half-yearly Bonds—General Remarks.

THE profit earned by a Company having been ascertained from the Revenue or Profit and Loss Account in the manner already indicated in Chapter X, there then remains for settlement the amount of profit available for the payment of dividend, and in some cases this requires very careful consideration by the Auditor. Dividends (with the exception of interim dividends) are declared by the Shareholders at their General Meetings, and it is the duty of the Directors, and not of the Auditors, to recommend to the Shareholders what amount out of the profit shown in the Accounts should be appropriated for the purposes of the dividend. This recommendation can, however, be based only on the Accounts submitted to the Shareholders at the meeting, and certified by the Auditor, and “he must not certify what he does not believe to be true, and he must take reasonable care and skill before he believes that what he certifies is true.”—*In re London and General Bank* (No. 2) [1895], 2 Ch. 683.

As regards the declaration of a dividend of a limited Company, an Auditor of a Company is not concerned. His responsibility is confined to the accuracy of the amount shown on the face of the Accounts or the “Net Profit” according to the best of his information and the explanations given to him and as shown by the Books of the Company.

“It is nothing to him” (i.e. the Auditor) “whether dividends are properly or improperly declared, provided he discharges his own duty to the shareholders. His business is to ascertain and state the true financial position of the Company at the

time of the audit, and his duty is confined to that.”—*In re London and General Bank* (No. 2) [1895], 2 Ch. D. 682.

Responsibility does not rest upon an Auditor for the declaration of an interim dividend, should such have been declared by the Directors, without consulting him in any way as to the advisability of paying such dividend.

“A dividend presupposes a profit in some shape, and to divide as dividend the receipts, say, for a year, without deducting the expenses incurred in that year in producing the receipts, would be as unjustifiable in point of law as it would be reckless and blameworthy in the eyes of business men.”—*Verner v. General and Commercial Investment Trust, Limited* [1894], 2 Ch. 266.

The various definitions of the term “Profit” by political economists are of little assistance to the Auditor in arriving at a decision as to whether he should, or should not, resist the payment of a proposed dividend, beyond, perhaps, their distinguishing between what is known as Fixed Capital and Circulating Capital, and it hardly comes within the scope of this work to discuss such questions, which are practically understood by every Lawyer and professional Accountant. What Auditors have really to consider is the legal interpretation of the word, and as Lindley, M.R., has said, “the word ‘profit’ is by no means free from ambiguity.”—*Verner v. General and Commercial Investment Trust, Limited* [1894], 2 Ch. 266.

As long ago as 1849, Campbell, L.C., intimated that dividends are supposed to be paid out of profits only, and where Directors order a dividend to any given Account, without expressly saying so, that implicitly declares to the world that the Company has made profits which justify such a dividend. He added that if no such profits had been made, and the dividend had to be paid out of the capital of the concern, a gross fraud was practised, and in his opinion Directors were not only civilly liable to those whom they had deceived and injured, but were guilty of a conspiracy, for which they were liable to be prosecuted and punished.—*Burnes v. Pennell*, 2 H.L.C. 535.

The question whether a Company has profits available for distribution must be answered according to the circumstances of each particular case, the nature of the Company, and the evidence of competent witnesses.—*Bond v. Barrow Haematite Steel Co.* [1902], 1 Ch. 353.

The late Kekewich, J., gave the following definition of profit: "The word 'profits,' like many other words in the

Kekewich, J. English language, and even some of a technical

character, is capable of more than one meaning, and it is often, and properly, used in more than one sense; and it seems to me that the two different senses of the word 'profits' afford the key to the solution of the difficulty which I have now to deal with. In the ordinary parlance, among mercantile men and lawyers, 'profits' mean that sum which periodically, at the end of the half-year, or year, or other time fixed by agreement, is divisible among the partners—a term which, of course, includes members of a company—as income. It is sometimes called 'net profits,' only to distinguish it from what are called 'gross profits.' It is the sum which is ascertained by the taking of a proper account of what has been made by trading, and is therefore distributable between the parties entitled. But the word 'profits' is also used properly in this sense; when you come to wind up a concern, you have to pay all the debts; you have to repay to each partner what he has brought in as capital; and after that has all been done, if the concern has been a successful one, there is a balance, and that balance is 'profit'; it cannot properly be called anything else. Whether you treat it as capital or whether you treat it as income is perfectly immaterial. The same persons receive both capital and income, and it is a matter for them to decide in what character they treat it. The best instance of that, because it is a more common one, is a partnership that is concerned in a single transaction, such as the purchase and sale, say, of a ship. The whole business of the partnership is first to purchase, and then, by proper proceedings, to sell the ship. There is no account in the meantime; it is impossible. The capital is found in the first instance. Certain moneys are expended, further,

beyond the purchase, in negotiating the sale, advertising, and so forth. Then the property is realized, and ultimately you ascertain whether you have a profit or a loss. If you realize more than sufficient to pay all the expenses, and return the original purchase money, then the excess is a 'profit.'"—*Bishop v. Smyrna and Cassaba Railway Co.* [1895], 2 Ch. 270.

"There is nothing at all in the Acts about how dividends are to be paid, nor how profits are to be reckoned; all that is left, and very judiciously and properly left, to the commercial world. It is not a subject for an Act of Parliament to say how Accounts are to be kept; what is to be put into a Capital Account, what into an Income Account, is left to men of business."—*Lee v. Neuchatel Asphalt Co.*, 41 Ch. D. 21.

Referring to the particular case which had been argued before him, Day, J., said: "Profits may be taken here to mean the surplus of income after defraying all, at least necessary, expenses of making it."—*Last v. London Assurance Corporation*, 12 Q.B.D., 389.

Jessel, M.R., said, in 1880, "Profits for the year, of course, mean the surplus in receipts after paying expenses, and restoring the capital to the position it was in on the 1st January in that year."—*Dent v. London Tramways Co.*, 16 Ch. D. 344.

Where a Banking Company with a paid-up capital of £500,000 sold part of its undertaking for £875,000, after deducting the paid-up capital and other incidental expenses there remained a net balance of £205,000, and the Directors proposed to treat this balance as profit, it was held by Chitty, J., that the £205,000 was profit on capital, and not part of the capital itself, that the Directors were justified in carrying this sum to the Profit and Loss Account, and, after appropriating to the Reserve Fund so much as they thought proper, might distribute the remainder as dividends.

In the course of his judgment, Chitty, J., stated the principles on which the Accounts of a Trading Company should, in his opinion, be set out so as to arrive at profits available for dividend as follows: "This is a

trading Company, and I have before me a Balance Sheet of 1891, to which I refer by way of illustration, to show how the Accounts of such a Banking Company are kept, and properly kept, in my opinion. I have before me the defendant Company's Accounts up to December, 1890. They put down on the one side their liabilities, treating properly the £500,000 which has been subscribed by the shareholders, as a liability, for the purposes of bringing it into account, as against the assets, which they put down on the other side. Then, on the same liability side, they properly put their current liabilities, and certain other liabilities, and Reserve Fund, which the Company, according to its constitution, is justified in making, and they add up the total amount of those liabilities. On the other side they put down their assets, and, for the purpose of giving information to the shareholders, they divide the assets into certain heads: 'Cash at Bank,' 'Bank Premises and Managers' Residences in Brazil and River Plate,' and then they add up the total on that side. They, of course,—because there is not a suggestion that these Accounts are not kept with perfect propriety and perfect honesty—therefore put down on the assets side the money value of their assets, some being in money itself and some not. Then, when the two sides of this Account are compared, there is a surplus of £44,000 shown, which goes, according to the Accountant's regular method of keeping Accounts, to the liability side, and represents the balance of assets over liabilities. Now, what is the result of keeping an account in this form? The capital of the Bank is intact, and the Accounts show it, and, after providing for the capital, there remains a surplus which rightly goes to the Profit and Loss Account. All that the Company is required to do, by force of the Companies Act, of 1862, is to keep its capital intact, and not to pay dividends out of its own capital; in other words, to keep that capital for its creditors, and any others who may be concerned therein. That mode of keeping the Account is an excellent illustration of the right way to provide profit and loss. Taking the figures on this Account, this sum of £44,000 is profit made, and profit available within the Act of 1862 for division

among the shareholders, unless there is something in the Articles which would prevent the Directors, and prevent the Company, from dividing the sum which thus stands to their credit.”—*Lubbock v. British Bank of South America* [1892], 2 Ch. 200.

“There is no law to prevent a Company from sinking its capital in the purchase of a property producing income and dividing that income without making provision for keeping up the value of the capital. Fixed capital may be sunk and lost, and yet the excess of current receipts over current expenses may be applied in payment of a dividend, though where the income of the Company arises from the turning over of circulating capital no dividend can be paid unless the circulating capital is kept up to its original value, as otherwise there would be a payment of dividend out of capital.”—*Verner v. General and Commercial Investment Trust, Limited* [1894], 2 Ch. 239.

The Earl of Halsbury, L.C., in delivering a judgment, made the following remarks : “It is easy to lay down as an abstract proposition that you must not pay dividends out of capital ; but the application of that very plain proposition may raise questions of the utmost difficulty in their solution. . . . On the one hand, people put their money into a trading concern to give them an income, and the sudden stoppage of all dividends would send down the value of their shares to zero, and possibly involve its ruin ; on the other hand, Companies cannot, at their will and without the precautions enforced by the statute, reduce their capital. But what are profits and what is capital may be a difficult and sometimes an almost impossible, problem to solve.”—*Dovey v. Cory* [1901], A.C. 487.

“I do not think that there is any rule of law that profit on one year’s trading cannot be divided merely because on the Profit and Loss Account there is a deficit over on the balance of former years ; but it does not follow from that that the amount of the profit of one year is necessarily to be treated as available for dividends. . . . Profit is not an automatic thing, nor is a divisible profit

an automatic thing.”—*In re Crichton's Oil Company* [1901], 2 Ch. 197.

A Company, formed in 1830 for the purpose of working gold mines in Brazil, made large profits from its principal mine, and paid good dividends from 1835 to 1886, when the top of the mine fell in and blocked it up, making further work impossible without a previous expenditure of large sums of money for labour and machinery in reopening it. To obtain the necessary funds for this purpose the Company was twice reconstructed, and its capital increased by the issue of shares and of debentures bearing interest at £10 per cent per annum; and in November, 1894, the mine was reopened and supplied with new machinery and plant. From the date of the issue of the debentures up to the date of reopening the Company made no profits, and the Directors paid the interest on the debentures, which amounted to a large sum, out of capital, but since November, 1894, the debenture interest and all outgoings were paid out of income. The Directors decided to form a Sinking Fund out of profits for the purpose of recouping the amount paid out of capital, and from the profits of the year 1897 proposed to pay a small dividend and to carry over the remainder to the credit of the Sinking Fund. Upon motion in an action by a debenture-holder and shareholder, on behalf of himself and all other debenture-holders and shareholders of the Company, for an injunction restraining the Directors from applying any part of the profits in payment of a dividend until the amount paid out of capital for debenture interest had been replaced, it was held that the Company were not bound to apply the profits in replacing debenture interest paid out of capital in previous years before declaring a dividend, and the action was dismissed.—*Bosanquet v. St. John D'El Rey Mining Co., Ltd.*, 103 L.T., 316.

In one case it was laid down that the Companies (Consolidation) Act, 1908, does not, nor does the general Law, prohibit a Company from distributing the clear net profit of its trading in any year unless its paid-up capital is intact or until it has first made good all trading losses incurred in previous years.

There is no rule of law which forbids a Company from setting off an appreciation in the value of its capital assets, as ascertained by a *bonâ fide* valuation, against losses on Revenue Account.

A manufacturing Company carrying on a newly established business incurred losses on its Trading Account for some years after its incorporation and subsequently made profits. The Directors set off the losses against an appreciation of the Company's capital assets as ascertained by a valuation made by two of their number who were not expert valuers and approved by the Company in general meeting, and paid dividends out of the subsequent net profits without any further provision for replacing the losses. Depreciation of Buildings, Machinery, and Plant had been charged in Revenue Account to an amount exceeding the losses—

Held by Peterson, J. : (1) that in considering whether or not the dividends were paid out of capital, the sums charged for depreciation could be written back to capital ; (2) that as the valuation was in fact made *bonâ fide*, and was approved by the Company in general meeting, the appreciation in value could properly be set off against losses.

Held by the Court of Appeal and Peterson, J. : (1) that there was no objection in law to such a revaluation and such a treatment of the appreciation in value ascertained thereby ; (2) that apart from any question as to the depreciation allowed for Buildings, etc., and whether or not the revaluation could be justified, the dividends were not in fact paid out of capital, but out of current profits.—*Lee v. Neuchatel Asphalte Co.* [1889], 41 Ch. D. 1, 15 ; *Verner v. General and Commercial Investment Trust* [1894], 2 Ch. 239, 266 ; *In re National Bank of Wales* [1899], 2 Ch. 629, 669, considered and applied.

The observations of the Lords in *Dovey v. Cory* [1901], A.C. 477, cannot be considered as having over-ruled or qualified the previous decisions of the Court of Appeal in the above mentioned cases.

Per Swinfen Eady, L.J., the fixed capital of a Company is what the Company retains in the shape of assets upon which the subscribed capital has been expended, and which assets

either themselves produce income independent of any further action of the Company, or, being retained by the Company, are made use of to produce income or gain profits. The circulating capital of a Company is a portion of the subscribed capital intended to be used by being temporarily parted with and circulated in business in the form of using goods or other Assets which, or the proceeds of which, are intended to return to the Company with an increment and to be used again and again and always return with accretions. When circulating capital is expended in buying goods which are sold at a profit, or in buying raw materials from which goods are manufactured and sold at a profit, the amount so expended must be charged against or deducted from receipts before the amount of any profit can be considered.—*Ammonia Soda Company, Limited v. Chamberlain* [1918], 1 Ch. 266.

As a rule, the amount of profit to be distributed among the shareholders of a limited Company is in the discretion of the Directors, but should the Memorandum of Association contain explicit instructions on this point, they should be carried out.

By Clause 6 of the Memorandum of Association of a limited Company incorporated in 1912, it was provided that the profits of the Company in each year should be applicable, first, in payment of a fixed cumulative preferential dividend of 7 per cent on the preference shares; secondly, in payment of a cumulative dividend at a rate not exceeding 2s. per share on the ordinary and "B" shares rateably; thirdly, the surplus (if any) should be carried to a Reserve Fund until it amounted to £25,000; fourthly, subject as aforesaid, and to the provisions of Article 126, the ordinary shares should confer on the holders the right to one moiety, and the "B" shares should confer on the holders the right to the other moiety of the profits or other moneys of the Company available for dividend which the Company should determine to distribute. Article 126 provided that the Directors should set aside out of the Profits of the Company such sum as was provided for by Sub-section 3 of Clause 6 of the Memorandum, and might, before recommending any further dividend under Sub-section 4,

set aside out of the Profits a further Reserve Fund. The preference and ordinary shares were of £1 each, the "B" shares of 1s. each. For the financial year ending 30th November, 1912, the Company paid a dividend of 7 per cent only on the ordinary shares, and a dividend of 6 per cent for 1913. In 1914 no dividend was paid on any of the shares. In 1915 there was a credit balance to Profit and Loss Account sufficient to pay the full cumulative dividend on the preference and ordinary shares, but no dividend was paid on the ordinary shares, and £6,662 3s. 11d. was carried over. In 1916 there was a credit balance of £17,066 19s. 4d. to Profit and Loss Account and the Directors recommended the payment of the cumulative preferential dividend, and, after writing down the value of certain of the assets, placed £5,000 to Reserve Account and carried forward £9,580 6s. 10d. No dividend was paid on the ordinary shares. The recommendations of the Directors were in each year indorsed by resolutions of the Company in general meeting. Subsequently to the issue of the writ the defendant Company, by special resolution, appropriated out of the profits for 1916, a sum of 4d. per share on the ordinary and "B" shares for each of the three years, 1914, 1915, and 1916.

In an action by the plaintiff as a holder of ordinary shares for a declaration against the Company as to his rights in the profits for the years 1915 and 1916—

Held, that the "Profits" consisted of the credit balance in the Profit and Loss Account of each year; that the case was similar to *Paterson v. R. Paterson & Sons* [1916], 53 S.L.R. 404; [1917], 54 S.L.R. 19, to determine the rights of shareholders *inter se*, and not strictly an action to recover payment of a dividend; and that the plaintiff was entitled to a declaration that, according to the true construction of the Memorandum and Articles, the defendant Company was bound to apply the whole of the Profits for the years 1915 and 1916 (after providing for the preference dividend) in payment of cumulative dividends at the rate of 2s. a share on the ordinary and "B" shares from the incorporation of the Company down to 30th November, 1916; and an account on the footing of such

declaration.—*Evling v. Israel & Oppenheimer, Limited* [1918], 1 Ch. 101.

There is no rule of law that in assessing a Fire Insurance Company to Income Tax, the total premiums receipt for the year, after deducting the losses and disbursements for the same period, are to be taken as the profits of the Company, without making any allowance for unexpired risks on policies outstanding at the end of the year; but where it becomes necessary to have recourse to some form of estimate, that method will be adopted which approximates most nearly to the truth.

Where, therefore, it was proved, on an appeal by a Fire Insurance Company against an assessment, that it was the practice of the Company, in making up its annual Accounts for the purpose of ascertaining the profits for distribution amongst its shareholders, to carry forward to the succeeding year a certain percentage of its premium receipts as an allowance to meet unexpired risks on outstanding policies, and that this percentage was a fair and reasonable allowance for that purpose, and the figures, on the triennial average prescribed by the Income Tax Acts, showed a large increase in the amount of such allowance for the year of assessment—

Held, that in the circumstances it was competent to the Company to make an allowance in respect of unexpired risks, and that the increase in the allowance formed no part of the profits or gains of the year.—*Sun Insurance Office v. Clark* [1912], A. C. 443.

There are two systems long known to professional Accountants upon which profits can be ascertained, styled respectively the Single Account System and the Double Account System. There have also been added two other systems in connection with the Accounts of limited Companies, both of which have been advanced by lawyers, and both of which, having received the official sanction of the Court of Appeal, must undoubtedly be looked upon as sanctioned by legal authority, but which in the eyes of Accountants are thoroughly unsound. The third system was sanctioned in the case of *Lee v. The Neuchatel Asphalte*

Four Systems
of ascertaining
Profits.

Co., 41 C.D. 1, and the fourth in *Verner v. General and Commercial Investment Trust, Limited* [1894], 2 Ch. 239.

By the Single Account System the profit is ascertained more by reference to the Balance Sheet than the Profit and

The Single
Account
System.

Loss Account or Revenue Account. If the Balance Sheet of a limited Company shows that the amount on the credit side exceeds the amount on the debit side, consisting of the paid-up capital of the shareholders, the debts and other liabilities, and any reserve created compulsorily in accordance with the Articles of Association, or voluntarily by the Directors acting under the powers given them by the Articles of Association, the excess is considered profit, and the theory of this system is that, so long as the capital of the shareholders is kept intact, this excess may be applied to the payment of dividends.

According to this system, the Account representing any wasting property, such as a Patent or a Lease, appears on the credit side of the Balance Sheet, originally at cost price, which Account is gradually reduced in value by charging such a proportion against Profit and Loss Account, and leaving as a balance in the Balance Sheet the amount which is considered to represent the unexhausted portion of the term of the Lease or Patent, or, what is equivalent to this, the amount remains at its original value on the credit side of the Balance Sheet, while the proportion referred to, after being charged periodically against the Profit and Loss Account, is carried as a Reserve into the debit side of the Balance Sheet. This system received legal authority in *Stringer's Case*, 4 Ch. D. 475; Selwyn, L.J., stating that the Company "would have been justified in declaring a dividend, provided they had put a fair, and no more than a fair, value upon the ships and other assets which they actually had. Taking it one step further, and assuming the case that several of the ships had been lost, that the Company was bound to put down, as they did put down, their proportion of that loss as being a loss upon this Balance Sheet, the other two-thirds of the loss were to be covered by the responsibility and guarantee of the Confederate Government, and, according to the view of the

learned Vice-Chancellor, inasmuch as until the end of the war the value of that guarantee could not be ascertained, no dividend could be declared. I confess I am unable to agree with that view. I think that under those circumstances the Company was fully justified in putting a value on the ships and on the Confederate Debt—I think the Company was justified in doing that which, in truth, is done in almost every business, viz., taking the facts as they actually stood, and forming an estimate of their assets as they actually existed, and then drawing a balance so as to ascertain the result in the shape of profit or of loss.”

In *Helby's Case*, 2 Eq. 175, Kindersley, V.C., said: “The Balance Sheet or summary of account would show, on the one hand, all the assets, and, on the other hand, all the liabilities of the Company, and it was only on this sort of Statement that any safe conclusion could be drawn as to the question whether there had been any profit for the half-year or not, and whether any and what dividend should be declared.”

In *In re The Midland Land and Investment Corporation Case*, heard before Chitty, J., on the 8th November, 1886, but which, unfortunately, was not reported, the learned Judge said, “In declaring a dividend, in my opinion, in trading concerns, the Directors are entitled to put an estimate on the value of their assets from time to time, in order to ascertain whether there is or is not a surplus remaining after providing for liabilities (including, of course, paid-up capital), and where they make those valuations from time to time on a just and fair basis, and take all the precautions which ordinary prudent men of business engaged in a similar business would do, they are entitled to treat the surplus thus ascertained as profit.”

This was the view taken by Wright, J., in a later case. A Balance Sheet had been prepared showing a net profit of £11,493; but the Directors, with the approval of the Company's Auditor, caused a supplemental Balance Sheet to be prepared, in which the net profit was increased to £176,493, by transferring £165,000 from the

“Suspense” Account to the Profit and Loss Account. At a general meeting of the Company both Balance Sheets were approved, and in the same year the Company went into liquidation.

Ten years afterwards, the creditors having been paid, certain Directors claimed to be paid their shares of ten per cent. of the residue of net profits, in accordance with a clause in the Articles of Association, which was opposed by the Liquidator on the ground that the value of the assets had been largely over-estimated, and that the proposed distribution of the residue could not be made without a dividend being paid out of capital.

It was, however, held that as it was not impossible for reasonable men, at the time when the resolutions of the general meeting were passed, to take the view then taken as to the value of the assets, the claim must be allowed, but without interest.—*In re Peruvian Guano Co., Ex parte Kemp* [1894], 3 Ch. D. 690.

In a case tried by Byrne, J., the defendant Company purchased the property and assets of another Company, which included a debt due to the old Company of 100,000 dollars, secured by the promissory notes of the New York and Bermudez Company. This debt was not regarded or treated as an asset of any value upon the purchase, and it was not specifically mentioned in the Balance Sheets of the defendant Company as an asset. Later on the New York and Bermudez Company gave to the defendant Company new promissory notes for 127,000 dollars, being the amount of the original debt, with interest then accrued due. The 127,000 dollars had been paid off, and the defendant Company proposed to treat the whole of that sum, amounting to £26,258 16s., as profits available for dividend, and to distribute the same accordingly.

Byrne, J., granted an interim injunction restraining the defendant Company from distributing the 100,000 dollars as dividend without reference to the other business or assets of the Company; but added that he “must not be understood as determining that this sum, or a portion of it, may

not properly be brought into Profit and Loss Account, or be taken into account in ascertaining the amount available for dividend, that appears to me to depend upon the result of the whole Accounts for the year. It is clear, I think, that an appreciation in total value of capital assets, if duly realized by sale or getting in of some portion of such assets, may in a proper case be treated as available for purposes of dividend. This, I think, is involved in the decision in the case of *Lubbock v. British Bank of South America* [1892], 2 Ch. 198, cited with approval by Lord Lindley in *Verner v. General and Commercial Investment Trust* [1894], 2 Ch. 239, 265, where he says: 'Moreover, when it is said, and said truly, that dividends are not paid out of capital, the word "capital" means the money subscribed pursuant to the Memorandum of Association, or what is represented by that money. Accretions to that capital may be realized and turned into money, which may be divided amongst the shareholders, as was decided in *Lubbock v. British Bank of South America*.' If I rightly appreciate the full effect of the decision the question of what is profit available for dividend depends upon the result of the whole Accounts, fairly taken for the year—capital, as well as profit and loss—and although dividends may be paid out of earned profits in proper cases, although there has been a depreciation of capital, I do not think that a realized accretion to the estimated value of one item of the capital assets can be deemed to be profit divisible amongst the shareholders without reference to the result of the whole Accounts fairly taken."—*Foster v. New Trinidad Lake Asphalte Co.* [1901], 1 Ch. 208.

The Single Account System was originally adopted by Companies from it having been the practice for merchants and traders to prepare their Profit and Loss Accounts and Balance Sheets on this system, but there is one great obstacle to its being adopted as a universal method, viz., the difference between the nature of the capital of the partners in private partnerships, and of the capital of shareholders or partners in a joint stock enterprise, the former being fluctuating capital, and the latter a fixed one.

Single Account
System the
ordinary
mercantile
system.

In the Double Account System, that which has been acquired by means of the capital of the shareholders, either as originally or subsequently paid up, and also that which is acquired by means of the capital obtained from debenture-holders, or from loans obtained, whether secured or unsecured, must be treated as capital expenditure, and an account must be kept of this separately. The Revenue Account or Profit and Loss Account must be kept entirely distinct ; and the excess of income over expenditure properly chargeable against such income is considered the profit available for dividend.

Lord Wrenbury, when Burton Buckley, L.J., in the sixth edition of his work on the Companies Acts, gave the following example of this system : “ If a ship-owning Company’s capital be represented by ten ships, with which it trades, and one is totally lost and is uninsured, such a loss would be what is here called a loss on capital account. But if the same Company begins the year with ten ships, value, say, £100,000, and ends the year with the same ten ships, and the result of the trading, after allowing for depreciation of the ships, is a loss of £1,000, this would be what is here called a loss on Revenue Account. Where a loss on Revenue Account has been sustained, there is, of course, no profit until that loss has been made good, either by set-off of previous undivided profits still in hand, or by profit subsequently earned, but, until *Lee v. Neuchatel Asphalte Company*, the question was open whether a Company under the Companies Acts, which has lost part of its capital by loss on capital account, can continue to pay dividends until the lost capital has been made good.”

“ *Lee v. Neuchatel Asphalte Co.* has now shown the true principle to be that capital account and revenue account are distinct accounts, and that for the purpose of determining profits you must disregard accretion to, or diminution of, capital.”

It is no doubt true that before arriving at revenue at all there are payments which must be made good to capital, on account of capital wasted or lost in earning the revenue.

For instance, in the common case of leaseholds, which are a wasting property, the whole of the income will not properly be income. In the case of colliery properties, the difference between the price at which the coal is sold, and the cost of working and raising it will not all be income, for there must be a deduction made in favour of capital, representing the diminished value of the mine, by reason of its containing so many less tons of coal. In the case of a Tramway Company you will not have arrived at net profit before you have set apart a sum to make good deterioration, but when all proper allowances have been made in favour of capital, the balance, it is submitted, is revenue applicable for payment of dividend."

It is now well settled in law that where the Income does not exceed the Expenditure, or there happens to be from any cause no annual Income at all, the Capital cannot be applied in payment of Dividends upon shares.

Capital may not
be applied for
Dividends.

That has been determined in many cases, among others in *Flitcroft's Case*, 21 Ch. D. 519 ; *Guinness v. Land Corporation of Ireland*, 22 Ch. D. 349 ; and *Verner v. General and Commercial Investment Trust, Limited* [1894], 2 Ch. 239.

The third system of ascertaining profits is the one upon which the Directors of the Neuchatel Asphalte Paving Company prepared their Accounts, and which was approved by the Court of Appeal, affirming the decision of Stirling, J., dismissing an action brought by a shareholder to prevent the Directors declaring a dividend on the ground that, as a large part of the capital had been lost, the loss or depreciation of a concession and assets should first of all be made good.

The Third
System.

This case has already been referred to, and it is only necessary to say, further, that, according to this system, a Balance Sheet is not necessary for the purpose of arriving at the profits, but it must be borne in mind in deciding upon the profit available for dividend of any Company which appears to be in a position identical with that of the Neuchatel Asphalte Paving Company, that regard must be had to the Memorandum and Articles of Association of each particular Company.

Previous to this case it had usually been considered that where there has been a loss, either in the transactions of a non-trading Company, or in those of a trading Company, that before any future profits could be available for dividend the loss on the previous Revenue or Profit and Loss Accounts must be made good, and such is undoubtedly correct from a professional Accountant's point of view. When, however,

Lost Capital
need not be
replaced out of
Revenue.

there has been a loss, not because the expenditure belonging to any period is more than the Revenue, but because one or more of the Assets upon which the shareholders' capital has been expended has been depreciated, or even lost, it now appears to be settled law that such need not be replaced out of Revenue. In other words, it appears that the capital of a Company, and the revenues derived therefrom, are to be treated in the same manner as have for many years been treated property left in trust by a testator for the income to be paid to persons under his Will, with the exception that trading and other Companies are entitled to take credit, not merely for the cash received, but for profits earned during the period, provided the Directors are of opinion that it will ultimately be realized, and that their views, after careful investigation, have been approved by the Auditor.

On this point, Stirling, J., stated, "The plaintiff's second point is, that the property of the Company is not now sufficient to make good the Share Capital; that the Assets to provide for that Share Capital must be made up before any dividend can be declared; and that if dividends are declared without that being done that is to be treated as a return, and a division of Capital among the Shareholders, and therefore illegal. In my opinion that is entirely wrong. It is a misapplication of the term 'Return of Capital.'"—*Wilmer v. McNamara & Co., Ltd.* [1895], 2 Ch. 252.

Though the paid-up capital of a limited Company cannot be lawfully returned to the shareholders under the guise of dividends or otherwise, yet the law does not prohibit such a Company—even if it be a Banking Company—from paying dividends unless its paid-up capital is intact.

The payment of dividends out of the excess of the receipts over the outgoings of a year, after making some allowance for bad debts, losses made in previous years being ignored, and in effect thrown on the capital, does not amount to a payment of dividends out of capital. If paid-up capital has been lost, its subsequent application in the payment of dividends is impossible.

Excluding cases in which it would be obvious that a particular debt or outlay could not be reasonably charged to capital and what to income is a matter for business men to determine, and on such a matter the opinions of honest and competent men may differ. There is no hard-and-fast legal rule on the subject.—*In re National Bank of Wales, Ltd.* [1899], 2 Ch. 629.

Even where a Tramway Company had, after working its tramways by a certain method involving a large outlay of Capital for the requisite plant, rolling stock, etc., determined to change entirely its method of traction, sell some or all of the old plant and rolling stock at a loss and replace it with new, it was not considered by the Scotch Courts a loss which ought to be replaced before a dividend could be paid.

In giving his judgment in the Court of Session, Edinburgh, Lord Kyllachy made the following remarks—

“The view I take of the present case is shortly this: It is not at all in my opinion a case such as might have presented itself if, for example (the respondents still working the tramways by horse traction), a fire or other catastrophe had occurred by which, say, their horses perished, and their cars were destroyed. In that case, there would, of course, have been beyond question a loss of assets in the most real sense, and a loss beyond doubt requiring to be replaced. And that being so, questions, I think, of some difficulty would or might have occurred as to how far the necessary replacement could properly or justifiably be charged to capital. It does not, however, appear to me that (taking the facts of this case as they appear on the complainer’s statement and the minute of admissions) we have here to deal with anything which can be considered as in any real sense a loss or depreciation, actual or prospective,

of the respondents' assets. The selling off of their horses and cars is, or will be, a voluntary act on the part of the Company. It is part of a scheme of transaction on which the Company has embarked presumably for the benefit and not for the detriment of their undertaking, and if such scheme or transaction involves, by reason of enforced sale, or otherwise, a sacrifice in one direction, such sacrifice will at least presumably be compensated by a corresponding gain in some other direction. I am, I think, entitled to hold that they entertain that view on reasonable grounds—grounds, at all events, which are not impeached by the complainer. But if that is so, it is surely a strong suggestion that I should assume without inquiry that the Company, as a going concern, will suffer upon the total transaction a loss equal to the loss on its discarded assets, or, on the other hand, that I should allow a proof as to the effect on the Company's general assets of the proposed conversion from horse to cable traction. I am certainly not prepared to make such an assumption, nor, on the other hand, am I prepared to allow such a proof except upon averments of a quite different kind from those with which I have here to deal. In saying so I do not proceed on any law or doctrine established or said to be established by recent decisions. I proceed on a principle as old as the beginning of Company law—the principle, namely, that in matters of the kind here in question—matters necessarily of estimate and opinion—a Company is presumably the best judge of its own affairs. In such matters the Court will not readily interfere with the Company's action, and it will not do so at all except on averments which involve practically a case of fraud or dishonesty. The truth is that the complainer's argument involved, as it seemed to me, the assumption that capital sunk—that is to say, capital not represented by tangible and available assets—is in all cases to be considered as capital lost. Of course, if that were so, the question or kind of question would here arise which arose in the two English cases of which we have heard so much; but such a proposition has never, so far as I know, been as yet at least advanced. The case suggested by Lord Justice Lindley, of expenditure made in starting a newspaper, is a

very good illustration of the impracticability of such a doctrine. But, apart from extreme cases, few things are, I should think, more common in ordinary business than operations of the kind with which we are here concerned. A merchant or manufacturer desires to enlarge his premises, satisfied that it will pay him to do so. He accordingly pulls down old buildings which have a certain value, and he replaces them by others at perhaps great cost. There is thus, of course, in a sense, the sacrifice of a permanent asset, and it may quite well happen that the new buildings if put into the market would not fetch a sum equal to the value of the old building, plus the cost of the new. But, for the purposes of the trader's business, the result may be entirely the other way, and the presumption is that the trader is satisfied that it is so. If he is so satisfied, he will certainly not consider that he has sustained a loss of capital, or feel bound to carry the cost of the old building to the debit of his Profit and Loss Account for the year. Similarly a manufacturer requires or resolves to discard certain machinery, and to replace it with other machinery more effective or more economical. Here again, the sacrifice in the case of the old machinery is simply an item in the cost of the change. So, also, when a Railway Company, as sometimes happens, alters its gauge, or substitutes, say, steel for iron rails. The operation necessarily involves a sacrifice of old material. But the assumption always is that the operation as a whole enhances the value of the concern or undertaking. And although it may be a prudent and proper thing to provide for the recurrence of such expenditure, and to set up a renewal is a question which the trader considers for himself, and one as to which, even in the case of limited Companies, Courts of Law are not accustomed to interfere, on the whole matter I am of opinion that the complainant has stated no relevant case for interfering with the proposed dividend, or for granting him interdict in terms of any part of his prayer."—*Cox v. Edinburgh and District Tramways Company*, "Glasgow Herald," 17th June, 1898.

The fourth system referred to is the one approved by the

Court of Appeal in *Verner v. General and Commercial Investment Trust, Limited*, already referred to.

The Fourth System. Should the Directors of a limited Company request the advice of the Auditor when settling the amount of profit available for dividend the Auditor must be exceedingly careful where the amount is arrived at in any of the three last methods. Should he, after considering the matter, feel any doubt, he should request the Directors to take the opinion of Counsel, the case to be submitted to him by the Solicitors of the Company for his approval before being laid before Counsel.

The dividends of Gas and Water Companies are limited by the private Acts of Parliament under which they are incorporated, or when no rate is prescribed, to **Dividends of Gas and Water Companies.** ten per cent. per annum, but if in any year the profits divisible do not amount to the prescribed rate, such a sum may be taken from the Reserve as, with the actual divisible profits of such year, make up the prescribed dividend. The Reserve referred to is, in the case of Gas Companies, formed in accordance with Clause 31 of the Gasworks Clauses Act, 1847 (*see* Chapter III), and, in the case of Water Companies, formed in accordance with Clause 76 of the Waterworks Clauses Act, 1847 (*see* Chapter III). The maximum dividend must not be paid free of Income Tax.

A Gas Company established before 1847 was authorized by its special Act to pay dividends limited to 10 per cent, and when that sum was reached, if there was a **Back Dividends of Gas Companies.** surplus, the price of gas was to be reduced ; there was also a provision for a Reserve or Contingent Fund, to be limited to £5,000 ; afterwards the dividends and interest thereon were to be no longer invested, but applied to any of the general purposes of the undertaking to which the profits of the Company were applicable. By another section of the Act it was enacted that if in any year after the passing of the Act the profit should not amount to 10 per cent per annum on the amount paid on the shares (whether such deficiency should have occurred before or subsequent to the formation of the Contingent Fund), such a sum might be

taken from the Contingent Fund as, with the actual divisible profits of such year, would enable the Company to make a dividend of 10 per cent per annum.

The Company sought to apply a sum of £3,990, the amount raised of the Contingent Fund, to the payment of back dividends of past years. It was held that as long as the Company paid 10 per cent they could not touch the Contingent Fund and that they were not entitled in any one year to divide more than 10 per cent, whether from profits or Contingent Fund, and were not entitled to apply the Fund in making up the dividends of past years to 10 per cent.—*Chamberlain v. New Worcester Gaslight Co.*, “Journal of Gas Lighting,” 8th June, 1875.

By an Act of Parliament it was enacted that it should be lawful for any shareholder who should have paid up one-half the amount of any share or shares of the G.N.R. Co. to require each share to be converted into two half-shares, whereof the one half which should be so fully paid up should be denominated “guaranteed” half-share, and thenceforth in respect of each whole share so divided the whole of the interest and dividends which would in each year have accrued should be applied in or towards payment, in the first place, of interest or dividend after the rate of £6 per cent per annum on the amount paid up on the half-share so denominated “guaranteed” and the remainder, if any, should alone be payable to the half-share so denominated “deferred,” provided that the Company should not pay any other or greater amount of interest or dividend upon the two half-shares than was for the time being paid on each undivided share. It was held, upon the construction of this section, that the holders of guaranteed half-shares were entitled to be paid their £6 per cent in each year, not only out of the dividends accruing in that year, but out of all subsequent dividends; and, therefore, if in any year the dividends were more than sufficient to pay £6 per cent on the guaranteed half-shares, the surplus must be applied in payment, in the first place, of all arrears due on those half-shares in respect of past deficiencies before any dividend could be declared

on the deferred half-shares.—*Matthews v. Great Northern Railway Co.* [28 L.J.], Ch. 375.

Where by agreement between a Company and the Local Government, second mortgage Bonds were to be issued with the interest (non-cumulative) dependent on the yearly earnings, then, by a law passed to give effect thereto, the Bonds were treated as half-yearly Bonds with interest contingent on half-yearly profits; then Bonds were issued in terms of the agreement and not the law; and then, by a Certificate of the Local Government, the Bonds were erroneously certified to be according to the law, it was held, in a suit by the holders of the said Bonds to expunge certain items debited against the half-year's income, to the prejudice of the claim for half-yearly interest, that, reading the agreement and the law together, the intention was that the Account should be taken at the end of each year, and not upon the footing that there was to be a rest at the end of every half-year; also that the costs of issuing the Bonds could not be charged against income to the prejudice of their holders; and that, with regard to the expenditure on stores, the amount chargeable to any one year must be regulated by what is fair in the interest of all concerned.—*Jamaica Railway Co. v. Attorney-General of Jamaica* [1893], A.C. 127.

Where the Articles of Association of a Company made no provision for the payment of Dividends other than this:

Differences in method of declaring Dividends.	“The Directors may . . . declare and divide an interim dividend out of the profits . . . and pay the same to the members in proportion to the capital held by each,” and when the Directors were further empowered to receive advances from any member of any sums due upon the shares held by him beyond what was actually called up, and to pay interest “in lieu of dividends” thereon, and “capital” was not defined in the Articles, it was held that the dividends fell to be apportioned according to the amount of the paid-up capital of each shareholder.— <i>Hoggan v. Tharsis Sulphur & Copper Co.</i> , 9 C. of S. Cas. 1191 (Sc.).
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Where the Articles of Association provided that the Directors may "declare a dividend to be paid to the members in proportion to their shares," and by the definition clauses the word "capital" was declared to mean the capital for the time being of the Company, and the word "shares" the shares into which the capital is divided, it was held that all the shares were entitled to participate equally in dividend, without regard to the amount paid up upon each.—*Oakbank Oil Co. v. Crum*, 8 A.C. 65.

The value of the gas supplied by a Local Authority for public lighting was held not to be "profit" within the meaning of a Statute which limited the amount of profit that they might make from this Gas undertaking.—*Chadderton and other Local Boards v. Oldham Corporation*, "Local Gov. Chron.," 16th January, 1892, p. 48.

Should buildings be destroyed by fire and the Company receive from the Insurance Co. a sum which is in excess of the cost of rebuilding the premises destroyed, the surplus is not a profit which can be used for purposes of dividend.

The profit made through debenture-holders cancelling their debentures, and accepting a lower sum than the amount they originally lent to the Company, would be a profit available for dividend. In the same way, should the depositors of a banking or other Company agree to accept a lower sum in consideration of their being paid off, the Auditor could not object to the Directors treating the balance as profit.

It is an elementary principle that a Court has no jurisdiction to interfere with the internal management of Companies acting within their powers.

A Company formed by letters patent under Canadian Acts, 27 & 28 Vict. c. 23, is not bound to divide all its profits on each occasion amongst its shareholders. It can legally reserve any portion thereof at its own discretion, and a Court has no jurisdiction to regulate it. Whether the undivided portion is retained to credit of profit and loss or carried to credit of a reserve, it may lawfully,

Profit on
Insurance.

On Cancelled
Debentures.

Distribution of
Profits under
control of
Directors.

in the absence of any express power, be invested on such securities as the Directors may select, subject to the control of a general meeting.—*Burland v. Earle* [1902], A.C. 83.

Where the Articles of Association of a Limited Company provided that no dividends should be payable except out of
 “realized profits,” it was held that “realized
 profits” must be taken in its ordinary commercial sense, as meaning at least the profits tangible for the purpose of division, and that the Directors, having treated estimated profits as realized profits, and having in fact paid dividends out of capital, on the chance that sufficient profits might be made, were held generally and severally liable.—*In re Oxford Benefit Building and Investment Society* [1887], 35 Ch. D. 502.

In another case the Memorandum of Association provided that “As between the holders of the ordinary shares and the
 holders of the founders’ shares the profits from
 time to time available for dividend shall be
 applicable as follows: (1) To the payment of a non-cumulative preferential dividend of 15 per cent. per annum on the capital paid up on the shares other than the founders’ shares. (2) Of the surplus, two-thirds shall be applicable to the payment of a further dividend on the capital paid up on the shares other than the founders’ shares, and the remaining third shall be applicable to the payment of dividend on the founders’ shares rateably. The Articles of Association provided that, so far as they do not exclude or modify the regulations contained in ‘Table A,’ the last-mentioned regulations shall, so far as the same are applicable, be deemed to be the regulations of the Company.” Clauses 11 and 12 contained provisions in substance equivalent to those of Paragraphs 1 and 2 of Clause 5 of the Memorandum. By Clauses 44 and 50 of the Articles some specified Clauses of Table A were expressly excluded, but Clause 74 of Table A, which is practically the same as Clause 97 of Table A of the Companies (Consolidation) Act, 1908, was not expressly excluded.

The Accounts for the year ending the 31st July, 1900, showed a profit (after deducting an *interim* dividend of two

and a half per cent on the ordinary shares which had been already paid) amounting to £13,225 11s. 4d. Out of this sum the Directors by their Report proposed to pay a dividend of twelve and a half per cent. on the ordinary shares, amounting to £5,721 17s. 4d., to carry £7,000 to a Reserve Fund, and to carry over £503 14s., thus paying no dividend to the holders of founders' shares.

The Court of Appeal held that Clause 74 (now Clause 97) of Table A was not *in toto* excluded by implication, and that "profits available for dividend" meant the net profits after making any deductions which the Directors could properly make before declaring a dividend, and that the Directors were justified, after paying a dividend of 15 per cent to the ordinary shareholders, in setting aside as a Reserve Fund to meet contingencies so much of the surplus of the profits of a year as they thought fit.—*Fisher v. Black and White Publishing Co.* [1901], 1 Ch. 174.

By the special Act of a Gas Company it was provided that the profits to be divided among the shareholders in any year should not exceed a given rate. It was held that in arriving at the rate of dividend the profits ought to be calculated as inclusive and not exclusive of the amount payable for the year in respect of income tax.—*Ashton Gas Co. v. Attorney-General* [1906], A.C. 10.

There can be no doubt that, for the purpose of the preservation of the shareholders' capital, the Single Account System, or the first of the systems referred to in this chapter, is preferable, and for many years the Accounts of Companies registered under the Act of 1862 were always prepared on this system. Upon which, however, of the systems the Accounts are prepared, if the Auditor believes them to be prepared not only strictly in accordance with fact, but also in accordance with one of the legal views referred to, it is unlikely that for certifying them he would be held liable should it be decided later on that the Directors had declared dividends contrary to law.

Limitation of
Dividend.

Auditors'
Duty.

CHAPTER XV

FURTHER REMARKS ON THE DUTIES AND RESPONSIBILITIES OF AUDITORS

AUDITORS should be trained for their duties—Fallacy of insisting on a Share-Qualification—Liability of Auditor for assenting to improper payment of Dividends—Definition of Auditor's Duties by Court of Appeal—Liability of Auditor for Calls in winding up—Auditor should be able to suggest improvements in mode of keeping the books—An efficient Audit of a Company should embrace all the transactions—Auditor may rely on the opinion of an Expert—Necessity for providing against bad debts—Inspection of the securities—Audit of a Company having branches—Local Auditors—Power of Auditor to employ a Professional Accountant—Directors of a Company, and not the Auditor, are responsible for its management.

It must be evident, after a careful perusal of the foregoing pages, that under any circumstances the duties of an Auditor

Auditors should be trained for their Duties. are grave and responsible. They become especially so when acting for a Public Company or Society registered under an Act of

Parliament, as guarding the interests of a number of shareholders or members who rely on his ability and integrity. In order to fulfil these duties properly he requires, beyond the possession of these necessary qualifications, a perfect knowledge of Book-keeping and Accounts, also an acquaintance with business matters generally, which can only be possessed by those whose training has been directed to this especial object.

For many years, however, the absence of these qualifications was, strange to say, not considered an objection by a meeting of shareholders, when making an election to the important appointment of Auditor of their Company's Accounts.

One of the most absurd qualifications, and yet the one most frequently put forward by a candidate, used to be the fact of his being a shareholder, and for this reason alone most incompetent persons were, and occasionally still are, selected to fulfil the office.

Fallacy of electing a Candidate because he is a Shareholder.

Assuming that those thus elected perform their duties with

their utmost care and diligence, and to the best of their ability, what will avail them when they have to deal with Statements of Accounts wilfully and fraudulently misrepresented? They are amateurs pitted against professionals, the book-keeper and manager being from the nature of their occupation the latter, while Auditors of the above description must most certainly be classed among amateurs.

To insist on each Director holding a minimum stake in a Company is undoubtedly a wise provision, but to make it a *sine quâ non* for an Auditor to be a shareholder is certainly a mistake.

It is true that the possession of an interest in the Company is an incentive to him to look carefully into its Accounts; but, as just shown, his ability may not be equal to allowing him to carry out his intentions, and, moreover, it does not follow that he will use any knowledge gained during his investigation for the benefit of his co-partners.

For example, an Auditor having a very large interest in a Company whose Accounts, as presented to him for confirmation, shows its affairs to be in a very satisfactory condition, but which on close examination into the books he finds is not the case, and that the Accounts have evidently been prepared with the intention of causing the shareholders to believe their property to be so far more valuable than it really is, that he knows it is his duty to refuse to certify the Accounts, may fail in his duty through selfish motives.

An Auditor if a large Shareholder may fail in his duties through selfish motives.

He knows that in the event of his refusing to sign the Accounts as they are presented to him, in consequence of which they would be altered to show an honest statement of the Company's affairs, the market price of the shares will fall and his own holding be thus depreciated. If, on the other hand, he certifies the Accounts as placed before him, the market price of the shares may be kept up or even rise, and he may then realize those standing in his name, with the exception of his qualification. He knows that in the event of the failure of the Company he will not be severely blamed, he will at

once plead that he did his best, and that the shareholders knew he was not a professional Auditor.

In 1887 an Auditor was, for the first time under the Companies Act, 1862, made a defendant to an action to hold him

Auditor held
liable for
assenting to
payment of
Dividends out
of Capital.

liable for breach of duty in making payment of dividends out of capital, and it was held by Stirling, J., that it is the duty of an Auditor of a Company's Accounts not to confine himself to verifying the arithmetical accuracy of the

Balance Sheet, but to inquire into its substantial accuracy, and to ascertain that it contains the particulars specified in the Articles of Association and properly drawn up so as to contain a true and correct representation of the state of the Company's affairs, also that as, in this particular matter, improper payments by Directors was the natural and immediate consequence of breach of duty on the part of the Auditor, he was liable in damages to the amount so paid, except so much thereof as was covered by the Statute of Limitations. —*Leeds Estate Building and Investment Company v. Shepherd*, 36 Ch. D. 787.

An Auditor was first made liable in 1864 for dividends paid away without the same having been legitimately earned, as already referred to in Chapter X, but this was under a former Act. Since the *Leeds, &c.*, case, Auditors have been held liable for dividends declared to have been improperly paid out of capital under the Companies (Winding-up) Act, 1890, now incorporated in the Companies (Consolidation) Act, 1908, and in the leading case under this Statute the following remarks were made in the judgment of the Court of Appeal—

“ His (the Auditor's) business is to ascertain and state the true financial position of the Company at the time of the audit, and his duty is confined to that. But then

Definition of
Auditor's
duties by
Court of
Appeal.

comes the question: How is he to ascertain that position? The answer is: By examining the Books of the Company. But he does not discharge his duty by doing this without

inquiry, and without taking any trouble to see that the Books themselves show the Company's true position. He must take

reasonable care to ascertain that they do so. Unless he does this his audit would be worse than an idle farce. Assuming the Books to be so kept as to show the true position of a Company, the Auditor has to frame a Balance Sheet showing that position according to the Books, and to certify that the Balance Sheet presented is correct in that sense. But his first duty is to examine the Books, not merely for the purpose of ascertaining what they do show, but also for the purpose of satisfying himself that they show the true financial position of the Company.”—*In re London and General Bank* (No. 2) [1895], 2 Ch. 683.

The following is an example of the methods adopted by dishonest officials to deceive their employers and Auditors—

In the Report of the Commissioner appointed 23rd November, 1893, under the Trustee Savings Banks Act, 1887, to inquire into the defalcations committed by the
Sudbury
Savings Bank
Case.
Manager of the Sudbury Trustee Savings Bank, he states that the Manager adopted four separate methods.

In the case of withdrawals :

(1) By inserting in the Cash Book a fictitious withdrawal entry to an account from which no withdrawal was made by the depositor.

(2) By falsifying in the Cash Book the amount of a genuine withdrawal by the alteration or addition of a figure.

In the case of deposits :

(3) By making no entry in the Cash Book of the amount deposited ; and

(4) By entering in the Cash Book a smaller sum than that actually deposited.

Auditors can be held criminally liable under the Larceny Act, 1916, or the Companies (Consolidation) Act, 1908, for wilfully making false statements in a Balance Sheet, Certificate or Report, and under Section 221 of the Criminal Code, 1872, of the Isle of Man, which is practically to the same effect, the three Auditors of Dumbell's Banking Co., Limited, which failed on the 3rd February, 1900, were, on the 19th November following, sentenced to hard labour on conviction of having been parties to the publishing of false Balance Sheets,

An Auditor is presumed to have knowledge of what is contained in the Books of the Company, and cannot plead ignorance of entries or of omission of entries in the books affecting himself in order to escape liability in a winding up. In 1865 the Secretary of a Company arranged with W. that some work connected with some buildings to be erected by the Company should be done by W., and that W. should be paid as to 20 per cent. in paid-up shares, and the balance in cash. On a rough estimate this would have given W. thirty £10 shares, and these were put down to his name in the books of the Company. In 1866 W. was appointed Auditor, and he audited the books of the Company in 1867 and 1868. In 1867 W. received a call-note, but this was withdrawn, and the Company acknowledged that it was a mistake, and that the shares were taken contingently on the above arrangement being carried into effect. No work was ever done by W. for the Company. In 1869 W. refused to audit the Accounts, being dissatisfied with them ; and at that time, at his request, the Solicitor of the Company purported to cancel the allotment to him. In 1869 the Company was ordered to be wound up. On a summons by the Official Liquidator to have W.'s name put on the list of contributories, it was held that W., as Auditor, must be taken to have known who were the shareholders, and that he was one ; and that, whatever might have been his rights as against the Company before the winding up, it was clear that now, and as against creditors, his name must be placed upon the list.—*In re The Matlock Old Bath Hydropathic Co., Ltd., Wheatcroft's Case*, 29 L.T., 324.

It may, however, be considered open to doubt whether the Court would now uphold this decision. In a later case, Bacon, V.C., in giving his decision, said : " The tendency of the more recent decisions is, that in order to impute to a man a contract to take shares something like a contract must be established." The Court of Appeal confirmed the decision, Bramwell, L.J., stating : " It seems to me in general extremely objectionable to imply that a man had knowledge of facts contrary to the real truth. This ought only to be

done where there is some duty on the part of the man to inform himself of the facts.”—*In re Wincham Shipbuilding, Boiler and Salt Company, Hallmark's Case* [1878], 9 Ch. D. 329.

An Auditor should be able not only to check and verify the Accounts placed before him, but also, if he finds the books are kept in a careless manner or on a bad system, be able to suggest a better method, the adoption of which might not only save expense but also ensure greater accuracy in recording the transactions of the concern of which he is Auditor.

The Accounts of many concerns are over-burdened with unnecessary detail, a large number of subsidiary books being employed, which might be concentrated in a fewer number, or, perhaps, even be dispensed with altogether. It is, however, “no part of an Auditor's duty to give advice, either to Directors or shareholders, as to what they ought to do.”—*In re London and General Bank* (No. 2) [1895], 2 Ch. 682.

A thorough and efficient audit should embrace an examination of all the transactions of the concern being audited, and an Auditor acting on this principle endeavours to ascertain that all had been duly entered and discharged. A purchase made, a sale effected, or any matter of business transacted, and once entered in one of the subsidiary books, becomes part of a system, with which it is so incorporated that it cannot be omitted, overlooked, or cancelled without so disarranging the organization that an efficient Auditor would at once detect either the carelessness or the fraud.

An Auditor “is perfectly justified in acting upon the opinion of an expert where special knowledge is required.”—*In re London and General Bank* (No. 2) [1895], 2 Ch. 683. “It would be no part of their (the Auditors') office to inquire into the validity of any transaction appearing in the Accounts of the Company.”—*Spackman v. Evans*, 3 H.L. 236.

“The duties of Auditors must not be rendered too onerous. Their work is responsible and laborious, and the remuneration moderate. I should be sorry to see the liability of Auditors

extended any further than in *In re London and General Bank*. Indeed, I only assented to that decision on account of the

inconsistency of the statement made to the
Lopes, L. J.

Directors with the Balance Sheet certified by the Auditors and presented to the shareholders. This satisfied my mind that the Auditors deliberately concealed that from the shareholders which they had communicated to the Directors. It would be difficult to say this was not a breach of duty. Auditors must not be made liable for not tracking out ingenious and carefully-laid schemes of fraud when there is nothing to arouse their suspicion, and when those frauds are perpetrated by tried servants of the Company, and are undetected for years by the Directors. So to hold would make the position of an Auditor intolerable.”—*In re Kingston Cotton Mill Co. (No. 2)* [1896], 2 Ch. 290.

A note should be taken by the Auditor of the age of the balances at the debit of the personal Accounts in the Ledgers, and he should inquire the reason why those of long standing have not been either settled or reduced in amount.

It is very important that due provision be made periodically for bad and doubtful debts, otherwise there will appear on the credit side in successive Balance Sheets an increasing amount due from the debtors of the concern, which, in the case of a Company, may ultimately attract the attention of the shareholders. On inquiry being made and the true value of these outstanding Accounts ascertained, it may be found on writing down this balance to its value that the difference absorbs part or the whole of the net profits taken credit for in the period under audit, and, consequently, no dividend can be declared.

When the Auditor, after discussion with the Manager or Secretary of a Company, is not satisfied that a sufficient amount has been allowed for probable loss on realization of debts, he should, in the interests of the shareholders, bring his views before the Directors, so as to fix them with responsibility in the event of their also disagreeing with his views, as it has been held that the Directors of a Banking Company were not liable to the Company for including in their Accounts

as good debts which were, in fact, bad, unless they could be fixed with knowledge of the fact.—*Turquand v. Marshall* [1876], 4 Ch. 376.

Nothing is more distasteful to shareholders than to find, after regularly receiving good dividends, they must be either reduced in amount or discontinued, because, not having been legitimately earned, they have been paid to them out of their own capital.

This is, however, continually occurring, sometimes through the discovery of amounts having been added to Capital Accounts which ought to have been charged against Revenue, sometimes through due provision not having been made for bad and doubtful debts, and frequently through a sufficient amount not having been periodically charged against the Revenue Account for depreciation in the value of plant, machinery, stock-in-trade, etc., or for the exhaustion of a lease.

Having completed his investigation of the Accounts, and being satisfied as to their correctness, so far as figures are concerned, the Auditor should then inspect the securities representing the assets, and ascertain that they are in the possession of the concern, free and unencumbered by mortgages or any charges, unless the fact of their being so charged is clearly stated in the Accounts. In the audit of the Accounts of an individual or of a firm, the Auditor is not always required to examine the securities representing the investments, if any. In the audit of the Accounts of a Company it is now recognized as being an essential part of the Auditor's duty.

In order that the examination of the securities may be carried out in a business-like and methodical manner, the Auditor should have prepared for him a list of the securities, arranged under the headings in which they appear in the Balance Sheet. The full particulars of each security should be given, with its value as taken credit for in that document.

The Auditor must be careful that the securities deposited by those to whom the concern has made advances are accompanied by the necessary undertakings to repay either on demand, or on the expiration of a stipulated period, the sums advanced,

with the interest thereon, also undertakings to deposit fresh securities with the Company in the event of the market price of those in its possession being unduly depreciated during the continuance of the loan.

When the same class of security has been deposited with a concern by more than one borrower, the Auditor must be careful that the documents which he has inspected as being held against a loan are not reproduced to him as the security deposited by another borrower.

All the
Securities
should be
tabled at the
same time.

In order to effect this, all the securities should be placed in the possession of the Auditor at the same time, and by his retaining the keys of the safes, or in some other way, the securities should remain under his control from the commencement of his inspection until its conclusion.

The examination of the securities should take place on the day after the financial period under audit has expired, or as near thereto as is convenient to the officials of a Company or the partners of a firm and the Auditor, otherwise the labour of the latter is liable to be increased by a change in some of the securities or the payment off of the loans against which they were held.

In the case of Consols and stocks transferable at the Bank of England, for which certificates of ownership cannot be produced, a form can be obtained upon application to the Chief Accountant of the Bank of England, which has to be filled up with the names of the stockholders, the amounts, and the names of the stocks at the close of business on the date of the Balance Sheet. On the form is a request that this information may be verified and the Statement forwarded to the Auditor at his address, which should be signed by the Secretary of the Company or Society, and there is also an authorization of the application, which has to be signed by a stockholder in each account, or in the case of a Corporation by the Chairman, Secretary, or other Officer. A copy of this form will be found in Chapter V.

In the case of stock registered in the books of other Bankers, a letter should be addressed to the Bankers requesting them to give the same information to the Auditor direct.

Bonds which pass by delivery, or "Bonds to Bearer," as they are usually termed, should be counted, and when the dividends thereon are payable by means of coupons attached the Auditor should ascertain that the coupon next due and all later coupons are attached.

The Auditor should see that the certificates of shares in American Railway Companies payable to persons named on the certificate have been indorsed by such persons.

When a concern has made advances upon first mortgages, the securities are represented by the title-deeds of the properties,

Inspection of
Mortgage
Securities.

and these should be inspected by the Auditor.

In the case of large Building Societies, these number many thousands. The Building Societies

Act, 1894, requires that the Auditor shall certify that he has inspected these mortgage deeds, and in every Company he should satisfy himself that these mortgages are actually in the possession of the Company, and, moreover, unless the fact is actually disclosed by the Accounts, that there is no charge or lien upon them.

The duties of an Auditor with relation to the inspection of securities are perfectly well understood, although not prescribed by law. Many persons go so far as to say that, not only has the Auditor to inspect the deeds, but to satisfy himself in each case that the loan is fully covered by the security. But this is perfectly impossible for an Auditor, for, however desirable it may be for the members of a Company or Society to know that this has been done, the carrying it into practice would involve an enormous expense. To carry out the views of some of those who have lately criticized their duties, an Auditor must be either at liberty to employ a Solicitor and a Valuer, or else he must possess himself the qualifications and experiences of three professions.

In the first place, the mortgage deeds when produced to him would have to be examined one by one to ascertain that the title is good, and that the property when first of all lent upon was of the value of the advance, and that at the date of the Auditor's examination it had not depreciated in value, or at any rate not below the value which, after giving

credit for the instalments already paid, left the Company or Society still secured. Conceive what this would mean, not only where the securities are many thousands in number, but where there are only two or three hundred. It requires very little reflection to see that the time this operation would take, even supposing the Auditor were competent to do it by himself, precludes its possibility, and were he to call in the two experts, the Solicitor and the Surveyor, already referred to, the members would, undoubtedly, object to the fees, and consider the remedy worse than the disease.

Impossible for
Auditor to
certify
Mortgages
fully Secured.

The duty of the Auditor in this respect is confined, therefore, to his satisfying himself, first, that proper care has been exercised by the Directors and officials in ascertaining that the security in each case was an ample security when the advance was made; secondly, that the securities are still in possession of the Company or Society; and, thirdly, that they have not unduly depreciated, or, if they have, that a proper reserve has been made.

“The Balance Sheet of a Company engaged in a hazardous trade will not be considered delusive and fraudulent merely because an estimated value was put upon assets of the Company which were then in jeopardy, and were subsequently lost, or because the Company was obliged to borrow money to pay the dividend, provided the facts fairly appeared in the Balance Sheet, and the balance fairly represented profits.”—*In re Mercantile Trading Co., Stringer's Case*, 4 C.A. 475.

The following method of examination of mortgage securities appears to cover the Auditor's duty to the fullest extent—

As regards the mortgage deeds held by a Company or Society to cover advances, a Register containing the particulars of each advance should be placed before the Auditor. Each advance should have a number, and a corresponding number should be placed on the conveyance to the Company or Society. A schedule of all the title-deeds should be set out, also the amount of the advance, the period for which it is made, followed by several columns, the first one giving the

Method of
examination
of Mortgage
Deeds.

heading for the year in which the advance is made. In the column opposite each advance the Auditor should place his initials, and the same process would be repeated in following years.

The boxes containing the deeds should be opened in the presence of the Auditor, not more than one box being opened at the same time. As a rule, these boxes are kept in the strong rooms of the Company's or Society's Bankers, and can only be opened by at least two different keys, held by two of the Trustees. Occasionally, a third key of a different lock is held by the Secretary. Each box, as opened, should be emptied, and the deeds, as checked, should be replaced in the box. The boxes should then be re-locked, in the presence of the Auditor, and the keys handed back to the Trustees or their representatives. Each security should bear a distinct number, which should correspond with the Register of Deeds, and the number of this Register should be placed against the name of each debtor in the schedule with which the Auditor is checking the deeds as produced. As the deeds should only be able to be taken out in the presence of the Trustees or their representatives, the Auditor can, in the case of those deeds which have previously been submitted to him, satisfy himself that they are the same which were shown to him on a former occasion, by means of his own private mark placed against the numbers of the deeds. As regards the deeds held for advances made since the date up to which the previous Accounts were audited, and the date of closing of the books, that is to say, made during the period embraced by the audit, they should be carefully examined by the Auditor, and the actual conveyances executed by the borrower to the Company or Society should be opened. From each of these the Auditor will obtain the amount of the advance and observe the due execution by the borrower. The conveyance should be numbered, and against the number he should put his private mark or stamp, and the deed should then be placed in a parcel with the other title-deeds of the property and deposited in the box. It is certainly not within the province of the Auditor to attempt to investigate, even if he be sufficient lawyer to do so, the title-deeds themselves.

A still better plan is for the Auditor to affix his private seal outside a package containing all the deeds of each security. The production of the packages with the seals unbroken would be an absolute proof of their not having been tampered with. In those cases where the deeds had been required for reference or for some other purpose they would be carefully re-examined by the Auditor, made into a parcel, and be re-sealed by him.

It may happen that some deeds are missing, the reason being that they are in the hands of the Solicitor for some purpose. A note should be taken of these, and before the Auditor ultimately signs the Accounts he should require their production. Deeds in
hands of
Solicitors. Occasionally, a further advance is made by a Company or Society upon the same title-deeds; this is either secured by a separate document or by an indorsement on the original conveyance, but in either case the actual conveyance or indorsement, with the execution by the borrower, should be produced to the Auditor.

The title-deeds representing the freehold and leasehold investments of the Company or Society, if any, should be inspected by the Auditor in the same manner; that is to say, either his private mark against the conveyances he has previously seen should be shown to him, or, in the case of a fresh purchase, the actual conveyance to the Trustees should be inspected. Should any of these investments consist of house property, the Auditor should satisfy himself that they are insured for the full amount, and should have produced to him the last receipt for the premium paid to the Fire Insurance Company.

Debentures when paid off are naturally surrendered, and the Auditor should require to have them produced to him at the following audit and have them either destroyed or cancelled in his presence. All coupons attached to the Debentures at date of redemption should be produced to the Auditor, and destroyed or cancelled in a similar way.

When a Company holds "Patents," a list should be prepared for the Auditor containing their description, registered

number, date, and number of years to run, so that he may form an opinion as to whether a sufficient amount has been written off for depreciation, and the Patents must be produced to him for inspection.

Patents.

When a Company has branches in the country or abroad, it is impossible for the Auditor to make such a thorough

Audit of a
Company
having
Branches.

investigation of its affairs as it is his duty to do when all the records of the business are kept in one office. The principal books are open to his inspection, and he should critically examine

the returns from the branches, and ascertain they are properly amalgamated with the books kept at the head office. The Companies (Consolidation) Act, 1908, enacts that, if a Banking Company has branch banks beyond the limits of Europe, it is sufficient if the Auditor is allowed access to such copies of and extracts from the books and Accounts of any such branch as may have been transmitted to the head office in the United Kingdom.

It is very important that, where another person's figures are taken as correct, the Auditor should require him to give a certificate of their correctness, and he should only sign the Accounts which are to be laid before the shareholders subject to such certificate. It is then at the discretion of the shareholders whether they shall be content with this partial audit, or whether they shall instruct their Auditor to visit all or some of the branches for the purpose of verifying the correctness of the returns.

Many Companies, with offices registered in Great Britain, carry on their business abroad, and the account-keeping

Local Auditors.

at the registered office, so far as the business transactions are concerned, practically com-

mences with entries made from returns forwarded periodically from the place or places of business abroad. It is most desirable that, where possible, these returns should be checked and certified by a professional Accountant, acting as the local Auditor; and, in order to insure this audit being as independent as possible, the Directors should request the Company's Auditor to select the Local Auditor, and give this Local Auditor

most definite instructions as to the form of returns to be made by him. The hands of the Local Auditor, when once appointed, would be very much strengthened were his appointment held in the same manner as that of the Auditor, and he were elected by the shareholders at the Annual General Meeting. In other words, he ought not to be liable to replacement by any action of a Local Board, or representative of the Company, whose Accounts he has to certify before they are forwarded to the head office.

The Accounts of a number of Companies owning railways, mines, and various trading concerns are necessarily solely checked in detail by the Local Auditor, and it is most important that he should be independent, as any irregularity which would occur would naturally be found in these Accounts. The Company's Auditor, beyond ascertaining that the returns as certified by the Local Auditor are properly entered in the books, has very little more to do with them, except as regards matters of principle, such as the question as to whether depreciation has been properly charged in respect of wasting assets, proper allowances made for loss likely to arise on realization of the debts, whether the stock has been taken in a proper manner, etc.

Section 108 of the Companies Clauses Consolidation Act, 1845, authorizes an Auditor to employ Accountants, at the
Power to expense of the Company, to assist him in in-
employ vestigating the Accounts, and a similar clause
Professional is usually inserted in the Articles of Association
Accountants. of Companies when they do not enact that the Auditors are to be Chartered Accountants.

Non-professional Auditors should take advantage of this clause when they have any doubts as to their capabilities of thoroughly investigating the Accounts, and it was decided that an Auditor appointed under the Companies Clauses Act, 1845, is entitled to appoint an Accountant under Section 108, even without the consent of his co-Auditor. —*Steele v. The Sutton Gas Co.* [1883], 12 Q.B.D. 68.

In this case the plaintiff and another had been appointed Auditors of the Accounts of the defendant Company, whose

special Act incorporated the provisions of the Companies Clauses Act, 1845. The plaintiff thought it necessary for the purposes of the audit of certain Accounts of the Company to have the services of an Accountant, and he had accordingly employed a Fellow of the Institute of Chartered Accountants, and paid him for his services the sum of fifteen guineas, which he sought to recover from the defendant Company. The plaintiff's co-Auditor refused to join in the appointment of the Accountant. The County Court Judge having given judgment for the plaintiff, a rule *nisi* was obtained to set aside his judgment and for a new trial, or to enter judgment for the defendants.

The plaintiff's counsel submitted it was the duty of each Auditor to examine the Accounts independently of the other, and to make separate reports if they took different views, and that it was a reasonable construction that if either of the Auditors should find it necessary to employ an Accountant for the purpose of making a satisfactory report on the Accounts he should have power to do so.

In giving judgment in favour of the plaintiff, Huddleston, B., said : " I think this rule must be discharged. The words of the Act may *primâ facie* bear the construction sought to be put upon them by the defendants' counsel, but on consideration I

come to the conclusion that that construction is incorrect. By the 106th Section the Directors are to deliver to the Auditors the half-yearly or other periodical Accounts and Balance Sheet fourteen days before the Ordinary Meeting at which the same are required to be produced ; and by Section 107 it is the duty of the Auditors to receive and examine the same. By Section 108 it is provided that ' it shall be lawful for the Auditors to employ such Accountants or other persons as they may think proper at the expense of the Company, and they shall either make a special report on the said Accounts or simply confirm the same.' It is obvious to anyone having experience of such matters that occasions occur when an Auditor must exercise a separate, independent judgment. One Auditor

may take a different view of the Accounts from that of his fellow Auditor. One may think that no assistance is needed ; the other may be of opinion that there are items or matters which he cannot undertake to deal with without assistance from an Accountant. Each Auditor, as it seems to me, may make a special report if they differ ; and it therefore appears to me the reasonable construction that, for the purpose of enabling him to make his report, he should be entitled to have such assistance from an Accountant as he requires. For these reasons I agree with the construction of the section suggested by the plaintiff's counsel."

Stephen, J., agreed with the decision, and leave to appeal was refused.

By the rules of a Benefit Society it was provided that the Accounts should be audited, and that after they had been audited and signed by the Directors, the Secretary and Treasurer should not be answerable for any mistakes, omissions, or errors that might afterwards be proved in them. An Action for an Account was commenced by two shareholders, on behalf of themselves, and all the other shareholders against the Secretary. No pleadings were delivered, and, on a motion for a Receiver being made, the defendant submitted to an Order for an account of all moneys and property of the Society come to his hands without any direction as to settled Accounts.

**Case of Holgate
v. Shutt as to
opening of
audited
Accounts.**

The defendant carried in a complete account, and the plaintiffs carried in a surcharge. The defendant then set up certain Accounts, which had been audited under the rules, as vouching his Account for the period over which they extended.

The point was brought before the Judge, who was stated to have expressed his opinion that the audited Accounts must be treated as conclusive. The plaintiffs then applied for a direction that in taking the Accounts the audited Accounts might be disregarded, on the ground that, as the Order did not save the settled Accounts, they could not be attended to.

The application was refused, and the plaintiffs appealed.

The Court, consisting of Baggallay, Cotton, and Lindley, L.J., decided that the audited Accounts ought not to be disregarded, and that the appeal must be dismissed; but the dismissal was prefaced by a statement of the opinion of the Court, that the plaintiffs in taking the Accounts under the Order, were at liberty to impeach the audited Accounts for fraud.—*Holgate v. Shutt* [1884], 27 Ch. D. 111.

On the examination of the audited Accounts, it appeared they had throughout been audited and signed by one person only, who was not a member of the Society. Bacon, V.C., made an Order, expressing his opinion that the Accounts had been audited in accordance with the rules, but his Order was discharged by the Court of Appeal, who held the Accounts had not been duly audited in accordance with the Statute and the Rules, but the Order was discharged without prejudice to the right of the defendant to show that the Accounts in question were to be treated as settled Accounts on any other ground than that they were audited in accordance with the Statute and the Rules.—*Holgate v. Shutt* [1885], 28 Ch. D. 111.

It is, fortunately, not often an Auditor comes into conflict with the Directors of a Company or Society. Both they and he have, as a rule, the same interests at heart, namely, the prosperity and welfare of the Company, and in his capacity as an ally and assistant of the Directors in all matters concerning the welfare of the shareholders, an Auditor has many opportunities of pointing out to them various improvements which might with advantage be adopted, not only in the book-keeping department, but also in the general routine work of the office.

As already stated, in many Companies, more especially in large ones, the amount of detail passed and repassed through the books is wholly unnecessary, and an efficient Auditor has many opportunities of suggesting alterations which would, if adopted, greatly lessen labour, and, consequently, expense.

It is very important that, in his anxiety to do his duty towards the shareholders, the Auditor should be careful

Decision of
the Court
of Appeal.

Auditor
has many
opportunities
of suggesting
improvements
in
Administration.

not to interfere in the management of the Company by insisting on the adoption of any of his recommendations as to

the system of book-keeping, the interior economy of the office, or in any other matter. He should endeavour to introduce his reforms by friendly suggestions, and by putting them forward gradually.

The Directors are the Managers of the Company on behalf of the shareholders, to whom they are alone responsible,

and the strict duty of the Auditor is to ascertain that the Accounts, as presented to the latter, show accurately the result of this management. It is by performing this duty conscientiously and efficiently he can best discharge his obligation to those who have elected him to his responsible position.

CHAPTER XVI

THE AUDITOR'S CERTIFICATE AND REPORT

CERTIFICATE required by Companies (Consolidation) Act, 1908, prior to Statutory Meeting of New Companies—Report and Certificate affixed to Balance Sheet the conclusion of Auditor's Duties—Simple Form of Certificate—Certificate suitable to Companies (Consolidation) Act, 1908—Interpretation of "As shown by the Books"—Certificates putting Shareholders on Inquiry—Danger of such Certificates—Misfeasance—Forms of Reports—Certificate of Auditor of Railway Companies—Of Insurance Companies—Of Electric Lighting Companies—Of Building Societies—Of Savings Banks—Of Friendly Societies—Auditor's position when Accounts incorrect—Auditor's Certificate privileged.

THE first Certificate which has to be given by the Auditor of a Company registered under the Companies Acts, 1908 to 1917, is the one that has to be affixed to the Report of the Directors issued to the members at least seven days before the Statutory Meeting.

The particulars to be given in the Directors' Report will be found in Section 65, Sub-section (3), of the Companies (Consolidation) Act, 1908 (*see* Chapter III), and the following form of Auditor's Certificate may be used—

The Company, Limited.

The Directors report to the Members as follows :—

1. *The total number of shares allotted is*
 2. *Of the shares so allotted have been allotted on the footing that they are to be paid up in cash as stated in the Prospectus, namely :—*

<i>On application £</i>	<i>per share,</i>	
<i>On allotment £</i>	<i>per share,</i>	
<i>On the day of</i>	<i>£</i>	<i>per share, and</i>
<i>the residue, viz., shares, have been allotted, credited as fully paid up, in part consideration for the goodwill, lands, buildings, stock-in-trade, and other assets of Messrs. purchased by the Company, as in the Company's Prospectus mentioned.</i>		

3. *The total amount of cash received by the Company in respect of the said shares allotted is £ ,*

4. *The following is an Abstract of the Receipts and Payments of the Company on Capital Account to the date of this Report :—*

Receipts.	£ s. d.	Payments.	£ s. d.
Shares			
Debentures			
Other sources (To be specified.)		Balance in hand	

NOTE.—*Here follows the rest of the Directors' Report, with which the Auditors are not concerned.*

“ We, the undersigned, being the Auditors of the above-named Company, hereby certify that the above Report is correct as to the shares allotted by the Company and as to the cash received in respect of such shares, and as to the Receipts and Payments of the Company on Capital Account.

“

“Auditors of the Company.”

The issue of his Report or Certificate in connection with a Balance Sheet is the conclusion of the Auditor's functions.

Certificate of Auditor on Balance Sheet. It is true he may, in the case of a Company or Society registered under an Act of Parliament, attend the meeting of Members, to which the Accounts, as audited by him, are presented, and, if necessary, address the meeting upon them. In the case of a private audit, it may be necessary for him to explain to his clients anything not quite clear to them on the face of the Accounts ; but, strictly, his duties as Auditor of a Company registered under the Companies Acts, are completed on the issue of his Report.

Although the Auditor's Report is forwarded to the Secretary of the Company, either affixed to the Balance Sheet or issued as a separate document, and, in the former case, printed and issued by the Directors with their own Report and the Accounts, the Report is actually made to the shareholders direct. “ It is impossible to read Section 7 of the Companies Act, 1879, without being struck with the importance of the enactment that the Auditors are to be appointed

by the shareholders, and are to report to them directly, and not to or through the Directors. The object of this enactment is obvious. It evidently is to secure to the shareholders independent and reliable information respecting the true financial position of the Company at the time of the audit."—*In re London and General Bank* (No. 2) [1895], 2 Ch. 682.

For many years, a simple Certificate affixed to the Accounts of a Company was deemed sufficient, such as

Simple form	" Audited,"
of Certificate.	" Audited and found correct " ;

and no more comprehensive one could be adopted, as it implied (although, perhaps, not always meant to do so) that everything possible in the prosecution of an audit had been done. Other forms of Certificate, such as

" Examined with the Books and Vouchers, and found to be correct " ;

" I have examined the above Accounts with the Books and Vouchers, and certify the same to be correct,"

were also considered sufficient for a Company, and in the case of private audits may still be adhered to, unless the client wishes for a more extended one.

The Companies (Consolidation) Act, 1908, enacted as follows—

" SECTION 113 (2).—The Auditors shall make a Report to the Shareholders on the Accounts examined by them, and on every Balance Sheet laid before the Company in General Meeting during their tenure of office, and the Report shall state:—

" (a) Whether or not they have obtained all the information and explanations they have required; and

" (b) Whether, in their opinion, the Balance Sheet referred to in the Report is properly drawn up so as to exhibit a true and correct view of the state of the Company's affairs according to the best of their information and the explanations given to them, and as shown by the books of the Company.

" (3).—The Balance Sheet shall be signed on behalf of the Board by two of the Directors of the Company, or, if there is only one Director, by that Director, and the Auditor's Report shall be attached to the Balance Sheet, or there shall be inserted at the foot of the Balance Sheet a reference to the Report, and the Report shall be read before the Company in General Meeting, and shall be open to inspection by any Shareholder."

The Auditor should not issue his Report until he has received from the Company the Balance Sheet as finally approved by the Board and signed by two Directors, or the sole Director referred to in Sub-section (3).

The general practice is for the Auditors to write their Report at the foot of the Balance Sheet itself under the signatures of the Directors, but an Auditor is at liberty merely to forward his Report to the Directors, in which case, however, the Report should identify very clearly the particular Balance Sheet to which it refers, so that there may be no room for subsequent dispute or confusion, and no danger that, by a mistake or otherwise, the Balance Sheet submitted to the shareholders, though bearing the proper date, is not the one actually referred to in the Report.

It is the practice of professional Auditors to keep with their papers a copy of every Balance Sheet they audit and a copy of their Report, so that, should any question subsequently arise thereon, they may be able to testify with certainty as to the matter.

The Act does not require the Auditors to satisfy themselves that the Report is attached to the Balance Sheet or referred to at the foot thereof ; this duty is imposed upon the Directors.

If the Report is not attached to the Balance Sheet, there should be at the foot of the Balance Sheet some such words as follows—

“ The Report to the Shareholders of Messrs. A B & Co., the Company’s Auditors, on the above Balance Sheet is dated the
day of and is open to inspection.”

It is for the Directors, and not the Auditors, to make the reference and settle the form thereof.

Before issuing his Report the Auditor should ascertain if there are any special clauses in the Articles of Association which bear on the Report. Any clause which is at variance with Section 113 of the Act would be inoperative, but there may be directions which impose additional duties on the Auditor, and which he must be careful to carry out.

In the case of a limited Company registered without Articles of Association, Clause 109 of Table A enacts that the duties

of Auditors are regulated by Sections 112 and 113 of the Companies (Consolidation) Act, 1908. Should there be any regulations in the Articles of Association precluding Auditors from availing themselves of all the information to which, under the Act, they are entitled as material for the Report to be made by them to the shareholders as to the true state of the Company's affairs, it has been judicially held that these regulations are *ultra vires* as being inconsistent with the obligations imposed upon Auditors.

"Any regulations which preclude the Auditors from availing themselves of all the information to which, under the Act, they are entitled as material for the Report which, under the Act, they are to make as to the true and correct state of the Company's affairs, are, I think, inconsistent with the Act."—*Newton v. Birmingham Small Arms Co., Ltd.* [1906], 2 Ch. 389.

When two or more Auditors are appointed, and each performs a part only of the audit, it is advisable for the Auditors to avoid a joint responsibility for that portion of the audit they do not perform by making some addition to their Report as follows—

"The audit, as regards the Head Office and Branches in London, has been carried out by the undersigned A B; the audit as regards the Branches has been carried out by the undersigned C D; and the audit as regards the other Branches has been carried out by the undersigned E F.

" A B	} <i>Auditors."</i>
" C D	
" E F	

The words "as shown by the Books of the Company," which the Act of 1908 require to be included in the Auditor's Report, was explained by the late Rigby, L.J., as follows: "The words, 'as shown by the Books of the Company,' seem to me to be introduced to relieve the Auditors from any responsibility as to affairs of the Company kept out of the books and concealed from them, but not to confine it to a mere statement of the correspondence of the Balance Sheet with the entries in the books."—*In re London and General Bank* (No. 2) [1895], 2 Ch. 692.

Interpretation
of "As shown
by the Books,
etc."

The following words might be added to the Auditor's Report of a Banking or other Company having branches abroad—

Certificate for
Companies with
Branches
Abroad.

"I have verified the Cash, Investments, Bills of Exchange, and other Assets in London, and have had access to the Accounts sent to London from the various branches in the Colonies."

When the Auditor of a Company, Institution, or any Association, whether or not registered under the Companies Acts, is satisfied that the Accounts are practically correct, but considers it desirable that some further information should be afforded, he is at liberty to address a special Report to the Members or Subscribers, and call attention to its existence by means of a short paragraph in the ordinary Report or Certificate.

Special Report.

In a Memorandum handed by the late Mr. Whinney, a past President of the Institute of Chartered Accountants, to the Companies Acts Amendment Committee, which sat in 1895, were the following remarks—

"It should be borne in mind that, in the case of the audit of Banks, it is necessary that Auditors should be especially guarded in their Certificates. The very existence of a Bank depends not only upon its assets, but also upon its audit. An Auditor takes a very serious step by putting into his Certificate anything which may affect the stability of the Bank.

Mr. Whinney's
remarks on
Certificate for
Bank Accounts.

"In most Banks the Auditor is required to keep its secrets. It therefore requires careful consideration how far Auditors would be justified in pointing out to Shareholders in General Meeting many matters which they might very properly bring to the attention of the Directors. This question is complicated by considerations affecting the confidential relations of a Company and its customers, and the interests of shareholders themselves, as regards any prejudicial effect on Assets under consideration."

These remarks of an Auditor of experience are indicative of the difficulty in which Auditors of Companies registered

under the Companies Acts, may occasionally find themselves, when, although they are satisfied that the Directors have been perfectly honest in their transactions with the funds of Shareholders and others intrusted to them, yet feel they have not disclosed the exact position of affairs to the Shareholders, not for the purpose of deceiving the latter in any way, but because they know that what they publish to the Shareholders must necessarily be public generally.

A very grave responsibility might rest on an Auditor who, in opposition to the unanimous views of Directors and Managers of a Bank, ventured to throw doubt in his Certificate on the value of assets and sufficiency of reserve. A run on the Bank, and possible destruction of the goodwill, might very possibly follow the publication of such a Certificate.

In order to meet this difficulty Auditors frequently adopted a form of Certificate which, although not giving the information to the world which might, in their opinion, be prejudicial to the interests of their clients, the Shareholders, yet afforded them the opportunity of putting questions to the Directors at the Annual General Meeting at which the Accounts are presented.

Certificate
putting
Shareholders
on Inquiry.

The risk of so acting was, however, pointed out in the following remarks of Lindley, M.R.—

“ A person whose duty it is to convey information to others does not discharge that duty by simply giving them so much information as is calculated to induce them, or some of them, to ask for more. Information and means of information are by no means equivalent terms. Still, there may be circumstances under which information given in the shape of a printed document, circulated amongst a large body of shareholders, would, by its consequent publicity, be very injurious to their interests, and in such a case I am not prepared to say that an Auditor would fail to discharge his duty if, instead of publishing his Report in such a way as to insure publicity, he made a confidential report to the shareholders and invited their attention to it, and told them where they could see it.” . . . “ An

Danger of such
Certificate.

Auditor who gives shareholders means of information, instead of information, respecting a Company's financial position, does so at his peril, and runs the very serious risk of being held judicially to have failed to discharge his duty."—*In re London and General Bank* (No. 2) [1895], 2 Ch. 684, 685.

The difficulties, however, referred to, which were experienced by Auditors of Companies registered under the Act of 1862, were disposed of by the Act of 1908, which allows the Auditor to send his Report as a separate document not attached to the Balance Sheet, and allows the Directors to insert at the foot of the Balance Sheet a reference to the Report, and to have the Report read before the Company in General Meeting.

Having regard to the preceding statement of Lindley, M.R., it is quite clear that when an Auditor is of opinion any of the assets are not likely ultimately to realize the value put upon them by the Directors, he does not discharge his duty to the shareholders by stating in his Certificate—

"The value of the Assets as shown on the Balance Sheet is dependent upon realization."

"It is a mere truism to say that the value of loans and securities depends on their realization."—*In re London and General Bank* (No. 2) [1895], 2 Ch. 685.

The giving of a Certificate, known to an Auditor to be a misleading Certificate, is a misfeasance within the meaning of the Companies (Winding-up) Act, 1890, **Misfeasance.** Section 10, and it is not a mere act of negligence; but where the Auditor believes that what he certifies is true, he fulfils his duty.

"An Auditor may certify the Accounts as correct, and be perfectly honest in the full discharge of his duty, yet the Accounts, nevertheless, may not truly represent the position of the Company.—*In re Kingston Cotton Mills Co.*, II, Manson 631.

"He is not an insurer; he does not guarantee that the Books do correctly show the true position of the Company's affairs; he does not even guarantee that his **Auditor not an Insurer.** Balance Sheet is accurate according to the Books of the Company."—*In re London and General Bank* (No. 2) [1895], 2 Ch. 683.

If, in the opinion of the Auditor of a limited Company, the Accounts and Balance Sheet are so explicit that no further information need be given to the shareholders, his Report may consist solely of the words necessary to fulfil the conditions laid down in Section 113 of the Companies (Consolidation) Act, 1908, and the following form may be adopted—

“ I report that I have obtained all the information and explanations I have required, and in my opinion the above Balance Sheet is properly drawn up so as to exhibit a true and correct view of the state of the Company's affairs according to the best of my information and the explanations given to me, and as shown by the Books of the Company.”

Should the Report not be affixed to the Balance Sheet, there should be substituted for the word “ above,” but placed after “ Balance Sheet,” the words “ dated the 19 ,” for the purposes of identification.

Should the Auditor consider it his duty to call the attention of the shareholders to any matter not specifically referred to in the Accounts, he should add the necessary paragraphs to his Report, for example—

“ With the exception that,” followed by—

“ No amount has been written off for depreciation of the lease of , which expires in 19 .”

“ No amount has been charged against the Profit and Loss Account in respect of the Patents, which still remain on the credit side of the Balance Sheet at £ .”

“ Nothing has been written off the Patents for many years, and I am unable to express any opinion as to their value.”

“ No depreciation has been written off this year in respect of the lease of the Factory or of Machinery, etc., the Directors having considered this unnecessary in the first year's Accounts, on the ground that, on the reconstruction of the Company, these assets were acquired by the present Company at less than one-half of the amount at which they stood in the Books of the old Company. In my opinion the shareholders may assent to this.”

“ Included in the amount due from debtors is one of £ from Mr. , one of the Directors of the Company.”

“ The amount taken credit for in the Balance Sheet in respect of Capital Expenditure on the Mine, etc., includes all the expenses at the Mine and the London Office Expenses to the 19 .”

"I have been unable to inspect the title-deeds of the property, as I am informed they are in the hands of Messrs. your local Bankers [*or Solicitors*]."

"I have to call your attention to the following facts, which came under my notice during the audit:—

"Your Managing Director collected during the year sums from various customers, giving receipts in respect thereof, but did not account for the moneys as and when received.

"This circumstance was discovered by me during the audit, and, on my reporting to the Directors, the whole amount was recovered from the Managing Director's sureties.

"I understand he has been relieved of his duties as Managing Director, but the Directors still retain him as a Manager, with modified powers, and I consider it my duty to report this to the shareholders."

"I have not seen the Accounts of the subsidiary Companies which constitute this Company, or in which the Company holds shares. The Directors inform me that, in addition to the above-mentioned remuneration, those of their number who are also Directors or Managers of Companies in which this Company holds shares have received from such Companies £ by way of Directors' fees, and £ by way of Managerial remuneration in respect of profits during the year. , and that the total income of such Companies on which the above-mentioned fees are based is about £ ."

"I have examined the Securities representing Investments of the Company, those held against Loans made by the Company at call, short, or fixed dates, and all Bills discounted in hand. I have also verified the Cash Balances, and vouched the Securities and Bills given as collateral security for Loans, and have now to report to the Shareholders that the foregoing Accounts agree with the Books, and, in my opinion, the above Balance Sheet is properly drawn up so as to exhibit a true and correct view of the state of the Company's affairs, according to the best of my information and the explanations given to me, and as shown by the Books of the Company, except that, whilst it shows the amount of the Bills discounted which have been re-discounted, it does not show the amount of the Bills and other Securities given out against Loans shown on the debit side of the Balance Sheet."

"With regard to the items of Stock, Share, and Debenture Investments £ , of Shares and Debentures of the Company, Limited, £ , I have not any adequate means of judging to what extent the total value of the Investments included in these items approximate to the figures at which they

appear in the Balance Sheet, but I understand from the Directors that they anticipate a serious loss thereon."

Where the Books of Account of a Company, having its registered office in Great Britain, are made up from Returns forwarded from abroad and certified by a local Auditor, the following form of Report may be followed—

"I certify that I have obtained all the information and explanations I have required, I have examined the Books, Vouchers, and Securities in London, and the Returns and Balance Sheets from and , these latter certified as correct by Mr. the Local Auditor; and the above Balance Sheet, in my opinion, is properly drawn up so as to exhibit a true and correct view of the state of the Company's affairs, according to the best of my information and the explanations given to me, and as shown by the Books of the Company."

The requirements of the Railway Companies Act, 1867, as confirmed by the Railway Companies (Accounts and Returns) Act, 1911, would be satisfied by the following Certificate—

**Certificate for
Railway
Companies.**

"We hereby certify that the above Half-yearly Accounts contain a full and true statement of the financial condition of the Company; and that the dividends proposed to be declared on the several Stocks and Shares are *bonâ fide* due thereon, after charging the Revenue of the Half-year with all expenses which ought in our judgment to be paid thereout."

The Auditors may at any time add to their Certificate, or issue to the shareholders independently at the cost of the Company, any statement respecting the financial condition and prospects of the Company which they think material for the information of the shareholders.

The following form may be adopted by Auditors in certifying the Accounts of Insurance Companies—

"We report that we have obtained all the information and explanations we have required. Having examined the above Balance Sheet with the Books and Vouchers of the Society, and having verified the Securities representing the Investments, we are of opinion that the Balance Sheet is properly drawn up so as to exhibit a true and correct view of the state of the Society's affairs according to the best of

**Insurance
Companies.**

our information and the explanations given to us, and as shown by the Books of the Society.

“ We certify that no part of any Fund has been applied, directly or indirectly, for any purpose other than the class of business to which it applies.”

The Electric Lighting Act, 1882, Section 9, prescribes that Electric Lighting Companies shall prepare an annual Statement of Accounts made up to the 31st December in each year, and the Electric Lighting Companies. Clauses Act, 1899, Schedule 6 (4), prescribes that any report made by the Auditor, or such portion thereof as the Board of Trade direct, shall be appended to the Annual Statement, and shall form part thereof for the purposes of Section 9 of the Act of 1882, thus making the Report, or part of it, a Certificate.

In the Copy of Form prescribed by the Chief Registrar of Friendly Societies, under the Building Societies Act, 1894, the following Certificate for Auditors is given.
Building Societies. The form is not compulsory, but it fulfils the requirements of the Act—

“ We, the undersigned, , being a person who publicly carries on the business of an Accountant at No. Street, , and , residing at , the duly appointed Auditors of the above-mentioned Society, do hereby attest the foregoing Accounts and Statements, and certify that they are correct, duly vouched, and in accordance with law, and we certify that we have, and each of us has, at this audit actually inspected the Mortgage Deeds and other Securities belonging to the Society, in respect of each of the Properties in mortgage to the Society referred to in the foregoing Accounts and Statements.”

For Savings Banks the following Form of Certificate is recommended—

Savings Banks. “ Having examined the Books and Accounts of the Savings Bank for the past year, certify that the foregoing extracted list of Depositors' balances, made up to the 20th November, , is a correct statement of the number of open Accounts, viz., , and of the amount due in respect of them severally and in the aggregate, the total amount being .” (in words and figures.)

For a Society registered under the Friendly Societies Act, 1896, and the Collecting Societies and Industrial Assurance Companies Act, 1896, the following form is recommended by the Chief Registrar—

Friendly
Societies, etc.

“The undersigned, having had access to all the Books and Accounts of the Society, and having examined the foregoing General Statement, and verified the same with the Accounts and Vouchers relating thereto, now sign the same as found to be correct, duly vouched, and in accordance with law.”

If in any respect the Accounts are incorrect, unvouched, or not in accordance with law, the Auditors are not to give the above Certificate, but are to make a Special Report to the Society, of which a copy is to be sent by the Society to the Registrar with the Statement.

An Auditor of a limited Company does not discharge his duty by issuing a Report containing only the words indicated by Section 113 of the Companies (Consolidation) Act, 1908, unless he is thoroughly satisfied as to the correctness of the Balance Sheet in every particular. An Auditor cannot certify that in his opinion the Balance Sheet is properly drawn up so as to exhibit a true and correct view of the state of the Company's affairs where expenditure has been omitted from the Revenue Account, and consequently from the liabilities in the Balance Sheet, if due provision has not been made for loss on realization of debts, if assets have been over-valued, or the Accounts are inaccurate for any other reason.

One of the most unpleasant situations in which an Auditor of a Company can be placed is when he feels that he cannot append his Certificate to the Accounts he has audited without qualification.

Position of the
Auditor when
the Accounts
are incorrect.

In those cases where they are grossly inaccurate, whether so prepared unintentionally, or for the purpose of misleading the shareholders or the customers of the Company, or with a view to induce the public to take up additional shares, then the duty of the Auditor is clear.

He must positively refuse to give his unqualified Certificate, but at the same time may intimate his willingness to do so provided the Accounts be re-drawn so as to present

an honest and correct statement of the transactions and position of the Company.

It frequently happens that Directors, owing, perhaps, to depression in trade, which they have reason to believe is only temporary, will, without any intention of acting dishonourably, present a Revenue Account showing a profit equal to that of preceding years, while, in fact, it is considerably less.

To any one not versed in Accounts this may appear impossible, but it is, undoubtedly, of very frequent occurrence.

When a Company is prosperous, an Auditor has usually very little trouble in arranging for a proper allowance for depreciation of stock-in-trade, plant, machinery, etc., to be charged against the Revenue Account, but when a period of depression in trade arises, there is frequently great difficulty in persuading the Directors to continue this wholesome practice. A variety of excuses are made for its discontinuance, and if the Auditor receives an actual refusal to amend the Accounts, it is not always easy to resolve on what course to pursue.

It may be argued that, as each shareholder is a partner in the undertaking, they should be informed by their Auditor

His difficulty
in deciding
what course
to adopt.

that the profits of the period referred to are not calculated on the same strict basis as hitherto, but the fact must not be overlooked that this information may be so made use of by a single shareholder as to depreciate or even totally destroy the future of the Company.

To refuse to sign the Accounts, or to insert in the Certificate that they are incorrect, might, therefore, be followed by results very disastrous to the Company, and, consequently, to the shareholders, whose representative the Auditor is.

The best plan an Auditor can adopt under these circumstances is to adopt the suggestion given by

May be
obviated by
means of a
Special Report
to the Members.

Lindley, M.R., and, in addition to the Report required by the Act of 1908, make a confidential Report to the shareholders, and inform them in his published Report where such confidential Report can be seen. The Statutory Report might be continued as follows—

"We consider it desirable on this occasion to make a confidential Report to the Shareholders, which Report must be considered as forming part of this Certificate, in connection with certain matters which have come under our notice during the audit, and this Report can be seen by shareholders on application at the offices of the Company."

Shareholders, on reading such a Certificate, will, after they have called at the office of the Company and seen the Report, have the opportunity of considering what steps they shall take at the meeting, and, on being brought together, will decide whether to adopt the Accounts as presented by the Directors, or to reject them and pass a resolution that they be amended as recommended by their Auditor in his Report.

The Auditor naturally must use his discretion as to the necessity of issuing a special Report of this nature. As long as the assets are not over-estimated in the Accounts he has not any right to insist on the Directors continuing a practice of charging the Revenue Account with allowances for depreciation, which, perhaps, although not always necessary, they had no objection to do out of large profits. Should, however, he feel sure the assets have really depreciated in value since the last Balance Sheet was taken out, and are undoubtedly below the value taken credit for in the Balance Sheet, then it is clearly his duty to acquaint the shareholders with this fact, should it not be disclosed in the Accounts.

There can be little doubt that an action for libel will not lie in respect of statements used in the Report of an Auditor, if made in a *bonâ fide* manner. A Company whose head office was at Manchester, with factories in Egypt, received from their Manager in Egypt Accounts of purchases made, quantity of cotton and Oil in stock, and the expenses incurred. In the Revenue Account submitted to the Auditors, the last item entered on one side of the Account was "Deficiency in Stock, £1,306 1s. 7d." It was explained to the Auditors that this last item, though entered as deficiency, was, in truth, only a depreciation in the value of the stock,

Libel Action
will not lie
in respect of
Auditor's
Report.

for which the Manager was not answerable ; but the Auditors, notwithstanding, affixed the following Certificate—

“ We certify that the Accounts as above stated are correct. Shareholders will observe that there is a charge of £1,306 1s. 7d. for deficiency of Stock, which the Manager is responsible for. His Accounts have been badly kept, and have been rendered to us very irregularly.”

This Report, together with that of the Directors, was submitted to the Ordinary General Meeting of the Shareholders of the Company, according to the usual practice, and it was resolved by the meeting that the Report should be printed and sent to the shareholders. The Reports (including the above statement) were accordingly sent to a printer, printed and circulated among the shareholders, and used at an adjourned meeting of the shareholders. The Manager brought an action for libel against the Company, when it was held that, as it was the duty of the Directors to communicate the Report of the Auditors to the shareholders, and it was for the interest of all the shareholders to be informed of the Report, the printing and publication of the Reports were *primâ facie* privileged, and that there was no evidence of expressed malice for the jury. —*Lawless v. Anglo-Egyptian Cotton and Oil Co.*, 4 Q.B., 262.

APPENDIX

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PART I

FINANCIAL ACCOUNTS

(Nos. 1 to 7, *Capital Accounts*)

No. 1 (a).—NOMINAL CAPITAL AUTHORIZED, AND CREATED BY THE COMPANY

Special Acts.	Capital authorized			Capital created.			Balance.		
	Shares and Stock.	Loans or Debenture Stock.	Total.	Shares and Stock.	Loans or Debenture Stock.	Total.	Shares and Stock.	Loans or Debenture Stock.	Total.
I. Special Acts conferring capital powers which have been fully exercised.	£	£	£	£	£	£	£	£	£
Totals									
II. Special Acts conferring capital powers which have not yet been fully exercised.									
[Each such Act to be stated here separately in order of date.]									
1.									
2.									
etc.									
Total									

NOTE.—Where a special Act has been consolidated in a later Act, a reference to the consolidating Act is sufficient.

NO. 1 (b).—NOMINAL CAPITAL AUTHORIZED, AND CREATED BY
THE COMPANY JOINTLY WITH SOME OTHER COMPANY

Special Acts.	Capital authorized.			Capital created.			Balance.		
	Shares and Stock.	Loans or Debenture Stock.	Total.	Shares and Stock.	Loans or Debenture Stock.	Total.	Shares and Stock.	Loans or Debenture Stock.	Total.
	£	£	£	£	£	£	£	£	£

NO. 1 (c).—NOMINAL CAPITAL AUTHORIZED, AND CREATED BY
SOME OTHER COMPANY ON WHICH THE COMPANY EITHER
JOINTLY OF SEPARATELY GUARANTEES FIXED DIVIDENDS

Special Acts.	Capital authorized.			Capital created.			Balance.		
	Shares and Stock.	Loans or Debenture Stock.	Total.	Shares and Stock.	Loans or Debenture Stock.	Total.	Shares and Stock.	Loans or Debenture Stock.	Total.
	£	£	£	£	£	£	£	£	£

[Note.—It should be stated in each case whether the dividend is guaranteed jointly with some other company or companies (the names of which should be given) or separately.]

NO. 2.—SHARE CAPITAL AND STOCK CREATED, AS PER STATEMENT
NO. 1 (a), SHOWING THE PROPORTION ISSUED

Description.	Amount created.	Amount issued.	Nominal additions to or deductions from Capital.	Amount on which Divi- dend is payable.	Amount which does not rank for Dividend until a future date.	Calls in Arrear.	Amount uncalled.	Amount unissued.
<i>[Each class of shares and stock to be stated in order of date of creation, with the preferential or fixed dividends, if any, to which it is entitled, and any other conditions attached to it.]</i>	£	£	£	£	£	£	£	£
Total								

NOTE.—A column to be provided where necessary between “amount created” and “amount issued” to show “additional stock issued to provide authorized money.”

No. 3.—CAPITAL RAISED BY LOANS AND DEBENTURE STOCK

_____	Raised by Loans.					Raised by issue of Debenture Stocks.						Total raised by Loans or Debenture Stocks.
	At per cent.	At per cent.	At per cent.	At per cent.	Total Loans.	Amount of Stock.	Nominal Additions or Deductions on Conversion.	Existing Amount of Stock.				
								At per cent.	At per cent.	At per cent.	Total Deben- ture Stock.	
Existing at	£	£	£	£	£	£	£	£	£	£	£	£
Existing at												
Increase												
Decrease												

Total amount authorized to be raised by loans and debenture stocks in respect of capital created as per Statement No. 1 (a).

	£
Less—Amount created but not yet available	
Reduction of borrowing power in respect of interest paid out of capital.	
Capitalized value of rentcharges, annuities, or feu duties, in accordance with Section 5 of the Lands Clauses Consolidation Acts Amendment Act, 1860.	
Other deductions, if any	
Total deductions	
Total amount raised by loans and debenture stock as above	
Balance being available borrowing powers at	

NO. 4.—RECEIPTS AND EXPENDITURE ON CAPITAL ACCOUNT

To Expenditure.	Amount expended to—	Amount expended during Year, as per No. 5.	Total.
	£ s. d.	£ s. d.	£ s. d.
Lines open for traffic			
Lines not open for traffic—			
New lines			
Widening of existing lines			
Lines leased			
Lines jointly owned			
Lines jointly leased			
Rolling stock			
Manufacturing and repairing works and plant—			
Land and buildings			
Plant and machinery			
Total capital expended upon railway .			
Horses			
Road vehicles employed in the collection and delivery of parcels, goods, and passengers—			
1. Goods and parcels road vehicles			
2. Passenger road vehicles			
Steamboats			
Canals			
Docks, harbours, and wharves			
Hotels			
Electric power stations, etc.			
Land, property, etc., not forming part of the railway or stations—			
(a) Used in connection with railway working			
(b) Not used in connection with railway working			
Other industries (to be stated separately)			
Subscriptions to other companies (for details, see Table No. 4 (a).)			
Special items			
 TOTAL EXPENDITURE			
 To Balance			
 TOTAL			

By Receipts.		Amount received to —	Amount received during Year.	Total.
		£ s. d.	£ s. d.	£ s. d.
Shares and Stocks (No. 2)			
Loans (No. 3)			
Debenture Stock (No. 3)			
Premiums on shares and Stocks £			
Premiums on Debenture Stock			
Total Premiums			
Discounts on Shares and Stocks			
Discounts on Debenture Stock			
Total Discounts			
Balance of Premiums and Discounts			
TOTAL RECEIPTS			
By Balance			
TOTAL			

No. 4 (a).—SUBSCRIPTIONS TO OTHER COMPANIES

Name.	Amount.	Nature of Security or Investment.
(a) Railway companies .	£	—
(b) Other	—	—

No. 5.—DETAILS OF CAPITAL EXPENDITURE FOR YEAR
ENDING

	Land and Compensa- tion.	Construc- tion of Way and Stations, Engineer- ing, etc.	Law Charges and Parli- amentary Expenses.	Total.
	£ s. d.	£ s. d.	£ s. d.	£ s. d.
Purchase of railways (particulars)				
Lines belonging to the Company open for traffic (particulars).				
Lines belonging to the Company not open for traffic—				
New lines (particulars).				
Widening of and additions to existing lines (particulars).				
Lines leased (particulars)				
Lines jointly owned (particulars).				
Lines jointly leased (particulars).				
Rolling stock—				
Locomotives	(Number and type of each description to be shown in accordance with Rolling Stock Returns.)			
Coaching vehicles				
Wagons				
Service vehicles				
Manufacturing and repairing works and plant (particulars)				
Horses				
Road vehicles employed in the collection and delivery of parcels, goods, and passengers (particulars)				
Steamboats (particulars)				
Canals (particulars)				
Docks, harbours, and wharves (particulars)				
Hotels (particulars)				
Electric power stations, etc. (particulars)				
Land, property, etc., not forming part of the railway or stations—				
(a) Used in connection with railway working (particulars)				
(b) Not used in connection with railway working (particulars)				
Subscriptions to other companies (particulars)				
(a) Railway companies				
(b) Other				
Special items (details to be given)				
Total capital expenditure for the year				

(Nos. 8 to 18, Revenue Accounts)

NO. 8.—REVENUE RECEIPTS AND EXPENDITURE OF THE WHOLE UNDERTAKING

See Statement.	—	Gross Receipts.	Expendi- ture.	Net Receipts.	Year 19 .		
					Gross Receipts.	Expendi- ture.	Net. Receipts.
		£ s. d.	£ s. d.	£ s. d.	£	£	£
10	Railway						
11	Omnibuses and other passenger vehicles not running on the railways.						
12	Steamboats						
13	Canals						
14	Docks, harbours, and wharves.						
15	Hotels, and refresh- ment rooms and cars where catering is carried on by the company.						
16	Other separate busi- nesses carried on by the company (in detail).						
	Total	£					
Miscellaneous Receipts (Net)—							
	Rents from houses and lands						
	Rents from Hotels						
	Other rents, including lump-sum tolls						
	Interest and dividends from investments in other companies (in detail).						
	Transfer fees						
	General interest						
	Special items						
	Total net income						

NO. 9.—PROPOSED APPROPRIATION OF NET INCOME

		Year 19 .
	£ s. d.	£
Balance brought forward from last year's account .		
Net income (as per Statement No. 8)		
Appropriation from Reserve		
Total	£ s. d.	
Deduct—Interest, rentals and other fixed charges (to be stated by each company in order of priority)—		
Interest on superannuation and other funds		
Rentcharges (or feu duties) and annuities		
Chief rents, wayleaves, etc., including lump-sum tolls		
Interest on loans		
Interest on debenture stocks (details).		
Rent of and guaranteed interest on leased and worked lines.		
Interest on Lloyd's bonds		
General interest		
Special items (if any)		
Total		
Balance after payment of fixed charges.	£ s. d.	
Appropriation to reserve and other special purposes—		
(Details)		
Total		
Dividends on guaranteed and preference stocks—	£ s. d.	
(Details)		
Total		
Balance available for dividends on ordinary stock—	£ s. d.	
(Details)		
Total		

NO. 9 (a).—STATEMENT OF INTERIM DIVIDENDS PAID

Balance available for dividends, Year 19	£ s. d.	£
Deduct—	£ s. d.	
Interim dividends paid (particulars)		
Undivided balance at 31st December, carried to balance sheet.		

Dr.

No. 10.—RECEIPTS AND EXPENDITURE IN

To Expenditure.	—	Year 19.	Percentage of Traffic Receipts.	
		
See Abstracts.	£	s. d.	£	Per cent. Per cent.
A—Maintenance and renewal of way and works				
B—Maintenance and renewal of rolling stock—				
	£	s. d.		
(1) Locomotives				
(2) Carriages				
(3) Wagons				
	£	s. d.		
C—Locomotive running expenses .				
D—Traffic expenses				
E—General charges				
Law charges				
Parliamentary expenses				
Compensation (accidents and losses)—				
	£	s. d.		
Passengers				
Workmen				
Damage and loss of goods, property, etc.				
Rates				
Taxes				
Government duty				
G—Running powers (balance, debit or credit)				
Total traffic expenditure	£			
J—Joint lines ¹				
Miscellaneous				
Total expenditure	£			
Net receipts	£			
Total	£			

NOTE.—Gross receipts to include the whole of the receipts from traffic carried line by trains of other companies and no annual payment is made therefor, or where accruing to other companies in respect of running powers exercised by them over the in this statement, but to be entered as a payment in the Running Powers Account respect of trains run by the company over the lines of other companies to be excluded Powers Account.

¹ Under this heading should be entered only the expenditure or receipts of jointly owned and are not already embodied in those of the parent companies (see Abstract J). In the case of other heads on the respective sides of this Account.

RESPECT OF RAILWAY WORKING

Cr.

By Gross Receipts.	—		Year 19.	Percentage of Traffic Receipts.	
	£	s. d.		.....	.....
See Abstracts.	£	s. d.	£	Per cent.	Per cent.
Passenger train traffic—					
Ordinary passengers—					
First class					
Second class					
Third class					
Season tickets—					
First class					
Second class					
Third class					
Workmen's tickets . . .					
Total receipts from passengers					
Mails					
Parcels up to 2 cwt., parcels post, and excess luggage .					
Other merchandise by passenger trains					
F—Less expenses of collection and delivery					
Total passenger train receipts .					
Goods train traffic—	£	s. d.			
Merchandise					
F—Less expenses of collection and delivery					
Live stock					
Coal, coke, and patent fuel					
Other minerals					
Total goods train receipts .	£				
Total traffic receipts .	£				
H—Mileage, demurrage, and wagon hire .					
J—Joint lines ¹					
Miscellaneous					
Total	£				

over the company's lines, except where (a) the traffic is carried over the company's (b) the payment made is by way of a fixed rent. The proportion of traffic receipts company's lines not to be treated as a deduction from the company's traffic receipts (Abstract G). The proportion of the traffic receipts accruing to the company in from the traffic receipts in this statement, and entered as receipts in the Running

jointly leased lines in respect of which the accounts are prepared by or for the joint committee and joint lines, the company's proportion of the revenue and expenditure to be spread over the various

ABSTRACT A.—MAINTENANCE AND RENEWAL OF WAY AND WORKS

			Year 19 .
	£ s. d.	£ s. d.	£
Superintendence—			
Salaries			
Office expenses			
Maintenance of roads, bridges and works—			
Earthworks			
Bridges, tunnels, culverts, retaining walls, and other works.			
Roads and fences			
Maintenance of permanent way—			
Renewal of running lines—			
Wages			
Materials			
Engine power and wagon repairs .			
Repair of running lines and sidings—			
Wages			
Materials			
Engine power and wagon repairs .			
Maintenance of signalling			
Maintenance of telegraphs			
Maintenance of stations and buildings—			
Stations, depots, and offices . .			
Engine sheds			
Carriage sheds			
Locomotive workshops			
Carriage workshops			
Wagon workshops			
Other buildings			
Total	£		

NOTE.—When any sum is transferred to or from a depreciation fund or suspense account, the net sum to be stated.

ABSTRACT B.—MAINTENANCE AND RENEWAL OF ROLLING STOCK

(1).—LOCOMOTIVES

	—	—	Year 19 .
	£ s. d.	£ s. d.	£
Superintendence—			
Salaries			
Office expenses			
Complete renewals—			
Wages			
Materials			
Repairs and partial renewals—			
Wages			
Materials			
Purchase of new locomotives			
Workshop expenses—			
Repair and renewals of machinery and plant			
Other expenses			
Total	£		

(2).—CARRIAGES

	£ s. d.	£ s. d.	£
Superintendence—			
Salaries			
Office expenses			
Complete renewals—			
Wages			
Materials			
Repairs and partial renewals—			
Wages			
Materials			
Purchase of new carriages			
Workshop expenses—			
Repairs and renewals of machinery and plant			
Other expenses			
Total	£		

NOTE.—When any sum is transferred to or from a depreciation fund or suspense account, the net sum to be stated,

(3).—WAGONS

	£	s.	d.	£	s.	d.	Year 19 .
Superintendence—							£
Salaries							
Office expenses							
Complete renewals—							
Wages							
Materials							
Repairs and partial renewals—							
Wages							
Materials							
Purchase of new wagons							
Workshop expenses—							
Repairs and renewals of machinery and plant							
Other expenses							
Total			£				

NOTE.—When any sum is transferred to or from a depreciation fund or suspense account, the net sum to be stated.

ABSTRACT C.—LOCOMOTIVE RUNNING EXPENSES

	£	s.	d.	£	s.	d.	£
Superintendence—							
Salaries							
Office expenses							
Steam train working—							
Wages connected with the running of locomotive engines.							
Fuel							
Water							
Lubricants							
Other stores, including clothing							
Miscellaneous							
Electric train working—							
Wages of motormen							
Electric current							
Lubricants							
Other stores, including clothing							
Total			£				

NOTE.—Any other form of power to be shown separately with corresponding details.

ABSTRACT D.—TRAFFIC EXPENSES

	—		—		Year 19 .
	£	s. d.	£	s. d.	£
Salaries and wages—					
Superintendence					
Stationmasters and clerks					
Signalmen and gatemen					
Ticket collectors, policemen, porters, etc.					
Guards					
Fuel, lighting, water, and general stores					
Clothing					
Printing, advertising, stationery, stamps, and tickets					
Wagon covers, etc.					
Expenses of joint stations and junctions					
Cleansing, lubricating, and lighting of vehicles					
Shunting expenses (other than mechanical)					
Working of stationary engines, hoists, cranes, etc.					
Coal, etc., tipping expenses					
Railway Clearing House expenses					
Miscellaneous expenses					
Total					

ABSTRACT E.—GENERAL CHARGES

	—		—		Year 19 .
	£	s. d.	£	s. d.	£
Directors' fees voted by shareholders					
Fees paid to and expenses of directors on joint committees not included in Abstract J					
Auditors and public accountants (fees, clerkage, and expenses)					
Salaries of secretary, general manager, accountant, and clerks					
Office expenses, ditto					
Rating expenses					
Fire insurance					
Superannuation and benevolent funds, pensions, etc.					
¹ Subscriptions and donations					
Miscellaneous expenses					
Total					

¹ Amounts contributed to institutions not directly controlled by the Company, and not for the exclusive benefit of the Company's servants.

ABSTRACT H.—MILEAGE, DEMURRAGE, AND WAGON HIRE

	Re- ceipts.	Expen- diture.	Balance.	Year 19 .		
				Re- ceipts.	Expen- diture.	Balance.
	£ s. d.	£ s. d.	£ s. d.	£	£	£
Mileage and demurrage—						
Passenger train vehicles.						
Goods train vehicles						
Hire of—						
Passenger train vehicles						
Goods train vehicles						
Total						

ABSTRACT J.—JOINTLY OWNED AND JOINTLY LEASED LINES
RECEIPTS AND EXPENDITURE

	Name of Joint Line.		Name of Joint Line.		Name of Joint Line.		Total.		Year 19 .
	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	Total.
Gross receipts: (Details to follow State- ment No. 10.)									£
Total receipts									
Total receipts, Company's proportion.									
Expenditure: (Details to follow State- ment No. 10.)									
Total expendi- ture.									
Total expendi- ture, Com- pany's pro- portion.									

NOTE.—In this abstract should be entered only the receipts and expenditure of jointly owned and jointly leased lines in respect of which the accounts are prepared by or for the Joint Committee, and are not embodied under their respective headings in the accounts of the parent companies.

No. 11.—RECEIPTS AND EXPENDITURE IN RESPECT OF
OMNIBUSES AND OTHER PASSENGER VEHICLES NOT
RUNNING ON THE RAILWAY

Dr.

Cr.

To Expenditure.	—	Year 19 .	By Gross Receipts.	—	Year 19 .
	£ s. d.	£		£ s. d.	£
Maintenance of horses			Passengers . . .		
Maintenance of horse vehicles.			Hire of vehicles . . .		
Maintenance of motors			Miscellaneous . . .		
Maintenance of build- ings . . .					
Traffic expenses . . .					
Miscellaneous . . .					
Total expenditure					
Balance . . .					
Total . . .			Total . . .		

NOTE.—When any sum is transferred to or from a depreciation fund or suspense account, the net sum to be stated.

No. 12.—RECEIPTS AND EXPENDITURE IN RESPECT OF
STEAMBOATS

Dr.

Cr.

To Expenditure.	—	Year 19 .	By Gross Receipts.	—	Year 19 .
	£ s. d.	£		£ s. d.	£
Salaries and wages . .			Passengers . . .		
Fuel . . .			Parcels . . .		
Stores, lubricants, water, etc. . .			Mails . . .		
Repairs . . .			Merchandise . . .		
Harbour fees and light dues.			Live stock . . .		
Miscellaneous . . .			Miscellaneous . . .		
Working expenses . .					
Depreciation and in- surance.					
Total expenditure					
Balance . . .					
Total . . .			Total . . .		

No. 13.—RECEIPTS AND EXPENDITURE IN RESPECT OF CANALS
Dr. *Cr.*

To Expenditure.	—	Year 19 .	By Gross Receipts.	—	Year 19 .
	£ s. d.	£		£ s. d.	£
Superintendence .			Tolls		
Wages of toll clerks, lock-keepers, etc.			Freight as carriers .		
Maintenance of canal .			Canal dock dues .		
Water supply . . .			Wharfage and cramage		
Auxiliary tramway ex- penses.			Rents (net receipts) .		
Traffic expenses as carriers.			Miscellaneous . . .		
Rates					
Taxes					
Miscellaneous . . .					
Total expenditure					
Balance					
Total		Total		

No. 14.—RECEIPTS AND EXPENDITURE IN RESPECT OF DOCKS,
Dr. *Cr.*
HARBOURS, AND WHARVES

To Expenditure.	—	Year 19 .	By Gross Receipts.	—	Year 19 .
	£ s. d.	£		£ s. d.	£
Superintendence .			Harbour dues . . .		
Maintenance . . .			Light dues		
Dredging			Dock dues—		
Wages not included in above.			On ships		
Rates			On goods		
Taxes			On passengers . . .		
Miscellaneous . . .			Wharf and pier dues.		
Total expenditure			Cramage and other services.		
Balance			Graving docks . . .		
			Rents		
			Miscellaneous . . .		
Total			Total		

NOTE.—When any sum is transferred to or from a depreciation fund or suspense account, the net sum to be stated.

NO. 15.—RECEIPTS AND EXPENDITURE IN RESPECT OF HOTELS,
AND OF REFRESHMENT ROOMS AND CARS WHERE
CATERING IS CARRIED ON BY THE COMPANY

*Dr.**Cr.*

To Expenditure.	—	Year 19 .	By Gross Receipts.	—	Year 19 .
Salaries and wages .	£ s. d.	£	Total receipts from hotels and from sale of provisions, etc., in refreshment rooms and cars.	£ s. d.	£
Provisions, wines, and spirits consumed.					
¹ Repairs and mainten- ance of hotels and refreshment rooms, and of fittings, furni- ture, etc., of refresh- ment cars.					
Heating and lighting of hotels and refresh- ment rooms.					
Rents					
Rates in respect of hotels.					
Taxes in respect of hotels.					
Miscellaneous . . .					
Total expenditure					
Total					
			Total		

NOTE.—When any sum is transferred to or from a depreciation fund or suspense account, the net sum to be stated.

¹ To include in the case of hotels and refreshment rooms expenditure on buildings, furniture, and plant.

NO. 16.—RECEIPTS AND EXPENDITURE IN RESPECT OF OTHER
SEPARATE BUSINESSES CARRIED ON BY THE COMPANY

No. 17.—ELECTRIC POWER AND LIGHT ACCOUNT

	Year				Year 19 .		
	£ s. d.	£ s. d.	£		Number of Units.	£ s. d.	Number of Units.
Superintendence:							
Salaries							
Office expenses							
Total Superintendence.				Current supplied:			
				For traction			
Generation:				„ power			
Maintenance of buildings				„ lighting			
Maintenance of plant, machinery, and tools.				To other consumers.			
Maintenance of feeders, cables, and accessories.							
Salaries and wages.							
Fuel, including carriage, etc.							
Oil, waste, water, and stores.							
Special items							
Total generation.							
Distribution:							
Maintenance of feeders, mains, and apparatus.							
Maintenance of meters, switches, fuses, lamps, etc.							
Salaries and wages.							
Royalties, etc., payable for use of patents.							
Rents payable							
Rates							
Taxes							
Special charges: (To be enumerated.)							
£				Total			

NOTE.—When any sum is transferred to or from a depreciation fund or suspense account, the net sum to be stated.

Dr.

No. 18.—GENERAL BALANCE SHEET

Cr.

	—	Year 19 .		—	—	Year 19 .
	£ s. d.	£		£ s. d.	£	
To capital account, balance at credit thereof, as per Account No. 4.			By capital account, balance at debit thereof as per Account No. 4.			
Amount due to bankers				£ s. d.		
Temporary loans and calls paid in advance.			Cash at bankers and in hand.			
Lloyd's bonds			Cash on deposit at interest.			
Unpaid interest and dividends.						
Interest and dividends payable or accruing and provided for.			Investments in Consols and Government securities.			
Amount due to railway companies and committees.			Investments in stocks and shares held by the Company, not charged as capital expenditure.			
Amount due to railway clearing houses.			Investment of superannuation and other provident funds.			
Savings bank			Stock of stores and materials.			
Superannuation and other provident funds.			Outstanding traffic accounts.			
Accounts payable . . .			Amount due by railway companies and committees.			
Liabilities accrued . .			Amount due by railway clearing houses.			
Miscellaneous accounts			Amount due by Postmaster-General.			
Special items (to be detailed).			Accounts receivable . .			
Fire insurance fund . .			Miscellaneous accounts			
Depreciation funds—			Suspense accounts (if any) to be enumerated.			
Railway			Special items (to be detailed).			
Steamboats (including insurance fund).						
Other businesses . . .						
General reserve fund . .						
Balance available for dividends and reserve as per Account No. 9.	£ s. d.					
Less interim dividends paid as per Statement No. 9 (a).						

XVI.—SUMMARY OF FINANCIAL RESULTS SECURED IN
COMPARISON WITH THOSE FOR PAST YEARS

NOTE.—Not to be made retrospective, but to be extended year by year until 10 years are given.

	19 .	19 .	19 .	19 .
	£	£	£	£
Total Expenditure on Capital Account (No. 4) .				
Gross Receipts from businesses carried on by the Company (No. 8).				
Revenue Expenditure on ditto (No. 8) . . .				
Net Receipts of ditto (No. 8)				
Miscellaneous Receipts net (No. 8)				
Total net Income (No. 8)				
Interest, Rentals, and other fixed charges (No. 9)				
Dividends on Guaranteed and Preference Stocks (No. 9).				
Balance after payment of Preference Dividends (No. 9)				
Dividends on Ordinary Stock (No. 9)				
Rate per cent.	%	%	%	%
Surplus or Deficit				
Appropriation to or from Reserve				
Brought forward from previous years				
Carried forward to subsequent years				

(Signed)----- *Accountant of the Company.*

Here follows the Certificates of the Responsible Officers as to the upkeep of the whole of the Company's Property.

Then follows the signature of the Chairman or Deputy Chairman for the Board of Directors and the signature of the Secretary of the Company. The whole ending with the

AUDITOR'S CERTIFICATE

*As prescribed by Act 30 & 31 Victoria, Cap. 127, to follow,
substituting Yearly for Half-Yearly Accounts.*

FORMS OF ACCOUNT PRESCRIBED BY GASWORKS CLAUSES ACT, 1871

THE GAS COMPANY.—Year ended 31st December, 19 .
A.—STATEMENT OF SHARE CAPITAL on the 31st December, 19 .

1	2	3	4	5	6	7	8	9
Description of Capital.	Maximum Dividend authorized.	Number of Shares issued.	Nominal Amount of Share.	Called up per Share.	Total paid up.	Amount issued but not paid up.	Remain- ing to be issued.	Total Amounts authorized.

B.—STATEMENT OF LOAN CAPITAL on the 31st December, 19 .

1	2	3	4	5
Description of Loan (Mortgage, Bond, Debenture, Stock, etc.).	Rate per Cent. of Interest.	Total Amounts borrowed at 31st December, 19 .	Remaining to be borrowed.	Total Amounts authorized.

Total Share Capital paid up (see A) . . . £
Do. Loan do. borrowed (see B) . . . £

Total Capital received £

C.—CAPITAL ACCOUNT, for the Year ended 31st December, 19 .

	Expenditure to 31st Dec., 19 .	Expended this Year.	Total to 31st Dec., 19 .		Certified Receipts, 31st Dec., 19 .	Received during Year.	Total Receipts to 31st Dec., 19 .
	£ s. d.	£ s. d.	£ s. d.		£ s. d.	£ s. d.	£ s. d.
1. To Expenditure to 31st December, 19 . <i>Since that date.</i>				1. By Ordinary Shares of £ each . . .			
2. To lands acquired, including Law Charges .				2. By ditto of £ each . . .			
3. To New Buildings, Manufacturing Plant, Machines, Storage Works, and other Structures connected with Manufacture .				3. By Preference Shares of £ each . . .			
4. To new Mains and Service Pipes (not being in place of old ones) including laying same, Paving, and other works connected with distribution . .				4. By Debenture Stock . .			
5. To new Meters (not in place of old ones), including fixing . .				5. By Mortgages and Bonds .			
6. To Costs of promoting Special Act . .				6. By Amount received in anticipation of Calls . .			
7. To Special Items (if any)							
Total Expenditure				Total			
To Balance of Capital Account							
		£					£

	£	s.	d.	£	s.	d.		£	s.	d.	£	s.	d.
<i>To Manufacture of Gas.</i>							<i>By Sale of Gas.</i>						
1. Coals, including Dues, Carriage, Unloading, and all Expenses of depositing same on Works							1. Common Gas (cubic feet), at / per 1,000 cubic feet						
2. Purifying Materials, Oil, Water, and Sundries at Works							2. Cannel Gas (cubic feet), at / per 1,000 cubic feet						
3. Salaries of Engineers, including Chief Engineer (if any), Superintendents, and Officers at Works							3. Public Lighting and under Contracts						
4. Wages and Gratuities at Works							4. Rental of Meters						
5. Repairs and Maintenance of Works and Plant (including Renewal of Retorts), Machines, Apparatus, Tools, Materials, and Labour £							<i>By Residual Products.</i>						
Less Old Material sold £							5. Coke, less Labour and Cartage						
<i>To Distribution of Gas.</i>							6. Breeze, ditto						
6. Salaries of Surveyor, Chief Inspector, Inspectors, Assistant Inspectors, and Clerks in Light Office							7. Tar, ditto						
7. Repair, Maintenance, and Renewal of Mains, and of Service Pipes, including Materials, Laying and Paving, and Labour							8. Ammoniacal Liquor, ditto						
8. Repairing, Renewing, and Refixing Meters							9. By Rents						
<i>To Public Lamps.</i>							10. By Transfer Fees By other items (if any)						
9. Lighting and Repairing													
<i>To Rents, Rates, and Taxes.</i>													
10. Rents													
11. Rates and Taxes													
<i>To Management.</i>													
12. Directors' Allowances													
13. Salaries of Secretary, Accountant and Clerks, Office Keepers, and Messengers													
14. Collectors' Commission or Salaries													
15. Stationery and Printing													
16. General Establishment Charges and Incidentals													
17. Auditor													
<i>To Law and Parliamentary Charges.</i>													
18. Law													
19. Parliamentary (oppositions)													
20. To Depreciation Fund for Works on Leasehold Lands (if any)													
21. To Bad Debts													
To other Items (if any)													
Total Expenditure													
Balance carried to Profit and Loss Account, E.													
							Total Receipts						

**E.—PROFIT AND LOSS ACCOUNT (NET REVENUE), for the Year ended
31st December, 19 .**

<i>Dr.</i>	<i>Cr.</i>
<i>£ s. d.</i>	<i>£ s. d.</i>
1. To amount carried to Reserved Fund Account, F (if any), from Profits of 19	1. By Balance of Net Profit brought from last Account (31st December, 19 .)
2. „ Interest on Temporary Loans, and Moneys received in anticipation of Calls	2. „ Amount drawn from Reserved Fund (if any) Less Dividend paid for the Half-year ended 31st December, 19 .
3. „ Ditto on Mortgages and Bonds accrued to 31st December, 19	3. Balance brought from Revenue Account, D, being Profit for Year to December, 19 . . .
4. „ Ditto on Debenture Stock to ditto	4. Interest on Moneys deposited .
5. „ Half-year's Dividend on 1st Preferential to 30th June, 19	
6. „ Ditto, 2nd Preferential to ditto	
7. „ Ditto on Ordinary Shares at per Cent.	
8. „ Balance of Net Profit, to be carried to next Account, subject to Half-year's Dividends to 31st December, 19	
<i>£</i>	<i>£</i>

F.—RESERVED FUND ACCOUNT, for the Year ended 31st December, 19 .

<i>£ s. d.</i>	<i>£ s. d.</i>
1. Amount (if any) carried to Profit and Loss Account (E) to make up deficiencies of Dividends to 31st December, 19	1. By Balance brought from last Account
2. Amount Paid for Extraordinary Claim or Demand (if any)	2. „ Balance brought from Profit and Loss Account (E) . . .
3. Amount of Balance to be carried to next Account	3. „ Interest on Amount Invested
<i>£</i>	<i>£</i>

Like Accounts must be given for Depreciation Fund for Works on Leaseholds (if any).

G.—STATEMENT OF COALS, during the Year ended 31st December, 19 .

Description of Coal.	In Store, 31st December, 19 .	Received during Year.	Carbonized or used during Year.	In Store, 31st December, 19 .
	Tons.	Tons.	Tons.	Tons.
Common				
Cannel				

H.—STATEMENT OF RESIDUAL PRODUCTS, for the Year ended 31st December, 19 .

Description of Residual.	In Store, 31st December, 19 . Estimated.	Made during Year. Estimated.	Used in Manufacture during Year. Estimated.	Sold during Year.	In Store, 31st Decem- ber, 19 . Estimated.
Coke, Common, chaldrons of 36 bushels					
„ Cannel „ „					
Breeze „ „					
Tar, gallons					
Ammoniacal Liquor, butts of 108 gallons					

I.—GENERAL BALANCE SHEET, on 31st December, 19 .

Dr.		Cr.	
	£ s. d.	£ s. d.	
1. To Capital Account— Balance at Credit thereof (Account C)		1. By Cash at Bankers	
2. „ Profit and Loss Account— Balance at Credit thereof (Account E)		2. „ Cash on Deposit or at Interest	
3. „ Reserved Fund— Balance at Credit thereof (Account F)		3. „ Coals for Stock on hand, 31st December, 19	
4. „ Depreciation Fund (for Works on Leasehold Lands)— Balance at Credit thereof (Account)		4. „ Coke and Breeze, 31st December, 19	
5. „ Unpaid Dividends		5. „ Tar and other Pro- ducts, 31st Decem- ber, 19	
6. „ Interest accrued and unpaid on Mortgages, Bonds, and Debenture Stock, and other Loans, to 31st December, 19		6. „ Sundry Stores, 31st December, 19	
7. „ Sundry Tradesmen and others, for Amount due for Coals, Stores, etc., to 31st December, 19		7. „ Gas and Meter Rental; Balance of this Account due to the Company on 31st December, 19 , less Deposits and Prepayments	
8. „ Wages and Contingencies— Amount due to 31st Decem- ber, 19		8. „ Coke and other Re- siduals, 31st Decem- ber, 19	
9. „ Other Items (if any)		9. „ Sundry Accounts, 31st December, 19	
	£	10 „ Special Items (if any), in- cluding Investments	£

(B).—Form applicable to Fire Insurance Business

REVENUE ACCOUNT of the	for the Year ending	19	in respect of Fire Insurance Business.
	£ s. d.	£ s. d.	£ s. d.
Amount of Fire Insurance Fund at the beginning of the Year— Reserve for Unexpired Risks . . . Additional Reserve (if any) . . .			Claims under Policies Paid and Outstanding . Commission . . . Expenses of Management . . . Contributions to Fire Brigades . . .
Premiums			Other Payments (Accounts to be specified) .
Interest, Dividends, and Rents. Less Income Tax thereon . . .	£ s. d.		Amount of Fire Insurance Fund at the end of the Year, as per Third Schedule— Reserve for Unexpired Risks, being per cent. of Premium . Income for the Year . Additional Reserve (if any) .
Other Receipts (Accounts to be specified) . . .		£	
		£	£

Note 1.—Items in this Account to be the net amounts after deduction of the amounts paid and received in respect of Re-insurances of the Company's risks.

Note 2.—If any sum has been deducted from the Expenses of Management Account and taken credit for in the Balance Sheet as an asset, the sum so deducted to be separately shown in the above Account.

(C).—*Form applicable to Accident Insurance Business*

REVENUE ACCOUNT of the		for the Year ending		19		in respect of Accident Insurance Business.		
£	s.	d.	£	s.	d.	£	s.	d.
Amount of Accident Insurance Fund at the beginning of the year—						Payments under Policies, including Medical and Legal Expenses in connection therewith .		
Reserve for unexpired risks .						Commission		
Total Estimated Liability in respect of Outstanding Claims .						Expenses of Management		
Additional Reserve (if any) . . .						Other Payments (Accounts to be specified) .		
						£ s. d.		
Premiums						Amount of Accident Insurance Fund at the end of the year as per Third Schedule—		
Interest, Dividends, and Rents.						Reserve for Unexpired Risks, being per cent. of Premium		
Less Income Tax thereon . . .			£ s. d.			Income for the Year		
						Total estimated Liability in respect of Outstanding Claims as per Fourth Schedule (C)		
Other Receipts (Accounts to be specified)						Additional Reserve (if any)		
						£		

Note 1.—Items in this Account to be the net amounts after deduction of the amounts paid and received in respect of Re-insurances of the Company's risks.

Note 2.—If any sum has been deducted from the Expenses of Management Account, and taken credit for in the Balance Sheet as an asset, the sum so deducted to be separately shown in the above Account.

(D).—Form applicable to Employers' Liability Insurance Business

REVENUE ACCOUNT of the for the Year ending 19 in respect of Employers' Insurance Business transacted within the United Kingdom.

	£	s.	d.	£	s.	d.
Amount of Employers' Liability Insurance Fund at the beginning of the Year—						
Reserve for Unexpired Risks						
Total estimated Liability in respect of Outstanding Claims						
Additional Reserve (if any)						
Premiums						
Interest, Dividends, and Rents						
Less Income Tax thereon						
Other Receipts (Accounts to be specified)						
Payments under Policies, including Medical and Legal Expenses in connection therewith						
Commission						
Expenses of Management						
Other Payments (Accounts to be specified)						
Amount of Employers' Liability Insurance Fund at the end of the Year, as per Third Schedule—						
Reserved for Unexpired Risks, being per cent. of Premium Income for the Year						
Total estimated Liability in respect of Outstanding Claims, as per Fourth Schedule (D)						
Additional Reserve (if any)						

Note 1.—Items in this Account to be the net amounts after deduction of the amounts paid and received in respect of Re-insurances of the Company's risks.

Note 2.—If any sum has been deducted from the Expenses of Management Account, and taken credit for in the Balance Sheet as an asset, the sum so deducted to be separately shown in the above Account.

For Form E see page 692.

Section 4. PROFIT AND LOSS ACCOUNT of the SECOND SCHEDULE for the Year ending 19 .

£ s. d.		£ s. d.	
Balance of last year's Account	£ s. d.	Dividends and Bonuses to Shareholders	£ s. d.
Interest and Dividends not carried to other Accounts	£ s. d.	Expenses not charged to other Accounts	£ s. d.
Less Income Tax thereon	£ s. d.	Loss Realized (Accounts to be specified)	£ s. d.
Profits Realized (Accounts to be specified)	£ s. d.	Other Payments (Accounts to be specified)	£ s. d.
Other Receipts (Accounts to be specified)	£ s. d.	Balance, as per Third Schedule	£ s. d.
	£		£

Section 4. BALANCE SHEET of the THIRD SCHEDULE on the 19 .

	£	£ s. d.	ASSETS.	£ s. d.
LIABILITIES.				
Shareholders Capital paid up (if any)	£		Mortgages on Property within the United Kingdom	£
Life Assurance Funds ¹ —			Do. do. out of the United Kingdom	£
Ordinary Branch			Loans on Parochial and other Public Rates	£
Industrial do.			Do. Life Interest	£
Annuity Fund ¹			Do. Reversions	£
Fire Insurance Fund			Do. Stocks and Shares	£
Accident Insurance Fund			Do. Company's Policies within their Surrender Values	£
Employers' Liability Insurance Fund			Do. Personal Security	£
Bond Investment and Endowment Certificate Fund			Investments—	£
Marine Insurance Fund			Deposit with the High Court (Securities to be specified)	£
Sinking Fund and Capital Redemption Fund			British Government Securities	£
Profit and Loss Account			Municipal and County Securities, United Kingdom	£
Other Funds (if any) to be specified			Indian and Colonial Government Securities	£
			Do. Provincial Securities	£
			Do. Municipal do.	£

£	s.	d.	£	s.	d.
Claims Admitted or Intimated but not paid ²					
Life Assurance
Fire Insurance
Bond Investment
Annuities Due and Unpaid ²					
Other Sums owing by the Company ² (to be stated separately under each class of Business).
Foreign Government Securities
Do. Provincial Securities
Do. Municipal do.
Railway and other Debentures and Debenture Stocks—
Home and Foreign
Railway and other Preference and Guaranteed Stock
Do. Ordinary Stocks
Rent Charges
Freehold Ground Rents
Leasehold do.
House Property
Life Interests
Reversions
Agents' Balances
Outstanding Premiums ²
Do. Interests, Dividends, and Rents ²
Interest Accrued, but not Payable ²
Bills Receivable
Cash—
On Deposit
In hand, and on Current Account
Other Assets (to be specified)
			£		

¹ Life Companies having separate Annuity Fund to show amount thereof separately.

² These items are or have been included in the corresponding items of the First Schedule.
 Note 1.—When part of the Assets of the Company are specifically deposited, under local laws, in various places out of the United Kingdom, as security to holders of Policies there issued, each such place and the amount compulsorily lodged therein must be specified in respect of each class of business, except that, in the case of Fire, Accident, or Employers' Insurance Business, it shall be sufficient to state the fact that a part of the Assets has been so deposited.

Note 2.—A Balance Sheet in the above form must be rendered in respect of each separate fund for which separate investments are made.
 Note 3.—The Balance Sheet must state how the values of the Stock Exchange Securities are arrived at, and a Certificate must be appended, signed by the same persons as sign the Balance Sheet, to the effect that in their belief the Assets set forth in the Balance Sheet are in the aggregate fully of the value stated therein, less any Investment Reserve Fund taken into account. In the case of a Company transacting Life Assurance Business or Bond Investment Business, this Certificate is to be given on the occasions only when a statement respecting valuation under the Fourth Schedule is made.

Note 4.—In the case of a Company required to keep separate funds under Section 3 of this Act, a Certificate must be appended signed by the same persons as signed the Balance Sheet and by the Auditor, to the effect that no part of any such fund has been applied, directly or indirectly, for any purpose other than the class of business to which it is applicable.

(E).—Form applicable to Bond Investment Business

REVENUE ACCOUNT OF THE	for the Year ending	19	in respect of Bond Investment and
			Endowment Certificate Business.
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100			

	£ s. d.	£ s. d.	£ s. d.
Amount of Bond Investment and Endowment Certificate Fund at the beginning of the Year			
Additional Reserve (if any)			
Premiums			
Interest, Dividends, and Rents			
Less Income Tax thereon			
Other Receipts (Accounts to be specified)			
Claims under Bonds and Certificates, Paid and Outstanding			
Commission			
Expenses of Management			
Other Payments (Accounts to be specified)			
Amount of Bond Investment and Endowment Certificate Fund at the end of the Year, as per Third Schedule			
Additional Reserve (if any)			

Note 1.—Items in this Account to be the net amounts after deduction of the amounts paid and received in respect of Re-insurances of the Company's risks.

Note 2.—If any sum has been deducted from the Expenses of Management Account, and taken credit for in the Balance Sheet as an asset, the sum so deducted to be separately shown in the above Account.

BUILDING SOCIETIES ACTS, 1874-1894

FORM OF ANNUAL ACCOUNT AND STATEMENT to be made by a Society under the Building Societies Acts, prescribed for general use by the Chief Registrar of Friendly Societies, with the approval of the Secretary of State.

STATEMENT OF ACCOUNTS of the Building Society, incorporated, 18 , and having its registered chief office or place of meeting at in the County of th year, ending the day of 19 The number of Members of the Society is

Dr.		I.—RECEIPTS AND PAYMENTS ACCOUNT				Cr.	
		£	s.	d.	£	s.	d.
To Balance (if any) at Bankers and in hand at beginning of year	£				By Balance (if any) due to Bankers at beginning of year		
	s. d.				£	s.	d.
To Cash received during year, viz. —	£				By Cash paid during year, viz. —		
	s. d.				£	s.	d.
[Here are to be stated separately the amounts under each head of receipt.]					[Here are to be stated separately the amounts under each head of payment.]		
To Balance (if any) due to Bankers at end of year					By Balance (if any) at Bankers and in hand at end of year		
					£	s.	d.

2.—STATEMENT SHOWING THE OPERATIONS OF THE YEAR

Balances at beginning of Year, as shown by last Annual Statement.	Additions during the Year. [Stating under each head the total amounts added, and not the excess of additions over diminutions.]		Diminutions during the Year. [Stating under each head the total diminution, and not the excess of diminution over additions.]		Balances at end of Year, as shown by Liabilities and Assets Account.
	Particulars.	Amount.	Particulars.	Amount.	
	£	s. d.		£	s. d.
Due to Shareholders	Subscriptions Shareholders Interest added Other additions, viz.—	of	Withdrawals of Shareholders Interest paid Other diminutions, viz.—		Due to Shareholders (e) . . .
Due to Depositors and other Credit- tors . . .	New Deposits Interest added Other additions, viz.—	.	Deposits withdrawn Interest paid Other diminutions, viz.—		Due to Depositors and other Credit- tors (f) . . .
Undivided Profit, not including Pros- pective Inter- est . . .	Fines and Fees Other sources Profit, viz.—	.	Management ex- penses, viz.—		Undivided Profit, not including Pros- pective Interest (g) . . .
(A)	(B)		(C)		(D)
Total . . . £					Total . . . £

£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.
Due on Mortgage Securities, not in- cluding Prospec- tive Interest .			Advanced on Mort- gage . due from Borrowers .			Repayment of Ad- vances . Interest received from Borrowers . Income from Proper- ties in possession . Amount written off for Losses . Other diminutions, viz.—			Due on Mortgage Securities, not in- cluding Prospec- tive Interest (h) .		
Other Assets .			Investments made, viz.—			Investments realized, viz.—			Other Assets (i)		
Balance deficient (if any) .			Interest on Invest- ments .			Interest received . Other diminutions, viz.—			Balance deficient (if any) (k)		
			Other additions, viz.—								
(A)			(B)			(C)			(D)		
Total . . £			Total . . £			Total . . £			Total . . £		

A and B added together must equal C and D added together.

LIABILITIES AND ASSETS ACCOUNT

Cr.

Dr.

To Liabilities to holders of Shares, viz.—

	Principal.		Interest.	
	£	s. d.	£	s. d.
[State the liabilities for each class of Share separately.]				
Paid-up Shares
Preferential Shares
Total

(e)

To Liabilities to Depositors and other Creditors, viz.—

For Deposits payable at a fixed period ending within the next 12 months				
For Deposits payable at a fixed period ending after the next 12 months.				
For Deposits payable upon various times of notice, viz.—				
Due to Bankers for Loans				
To other Creditors for Loans				
Other Liabilities, viz.—				
Total	.	.	.	.

(f)

By Balance due or outstanding on Mortgage Securities, not including Prospective Interest, viz.—

	Principal.		Interest Accrued (not Prospective).	
	£	s. d.	£	s. d.
Mortgages from Members where the repayments are not upwards of 12 months in arrears, and the property has been not upwards of 12 months in possession of the Society—				
On-----Mortgages where the debt does not exceed £500.				
On-----Mortgages where the debt exceeds £500 and does not exceed £1,000.				
On-----Mortgages where the debt exceeds £1,000 and does not exceed £3,000				
On-----Mortgages where the debt exceeds £3,000 and does not exceed £5,000.				
On-----Mortgages where the debt exceeds £5,000, as shown by Part I of the Schedule.				

Total of Mortgages available under s. 14 of the Act of 1894.
[If the Society has any Mortgages from non-Members, the like particulars as above are to be given in full for all such Mortgages.]

To undivided Profit (including Reserve Funds, but not including Prospective Interest), viz.—

(g)

On ----- Mortgages on Property of which the Society has been upwards of 12 months in possession, as shown by Part II of the Schedule -----
 On ----- Mortgages where the repayments are upwards of 12 months in arrear, and the property has not been upwards of 12 months in possession of the Society, as shown by Part III of the Schedule -----

Total number of properties mortgaged to the Society. -----
 Total -----

(h)

By other Assets—
 Amount invested in the Funds (bearing interest at ----- per cent.) -----
 Amount invested in other securities, viz.: -----

Nature of Security. -----
 Rate of Interest. -----

Other Assets, viz.—

Cash at Bankers -----

Cash in hands of -----

By Balance Deficient (if any) -----

(D)

(D), (e), (f), (g), (h), (i), (k). These figures must agree with those in the last column of Statement No. 2.
 (l). This figure must agree with that in the Certificate of the Auditors.

PART I

Date of Advance.	Whether subject to any prior Mortgage or Charge; if so, what Amount?	Whether Freehold Copyhold, or Leasehold.	Original Valuation of Property.	Amount of Advance.	Present Debt.	Amount of Payments in Advance.	Amount of Payments in Arrear.	Observations.
1	2	3	4	5	6	7	8	9
			£	£	£	£	£	£
		Total						

PART II

Roll Numbers.	Date of Advance.	Date when Possession was taken.	Whether subject to any prior Mortgage or Charge; if so, what Amount.	Whether Freehold, Copyhold, or Leasehold.	Amount of Advance.	Original Valuation of Property.	Debt when Possession was taken.	Present Amount included in Assets.	Gross Income for the Year.	Out-goings for the Year.	Observations
1	2	3	4	5	6	7	8	9	10	11	12
					£	£	£	£	£	£	
				Total .							

Date of Advance.	Whether subject to any prior Mortgage or Charge; if so, what.	Whether Freehold, Copyhold, or Leasehold.	Number of Months in Arrear.	Original Valuation of Property.	Amount of Advance.	Present Debt.	Amount of Payments in Arrear.	Observations.
1	2	3	4	5	6	7	8	9
				£	£	£	£	
			Total .					

FRIENDLY SOCIETIES ACT, 1896

59 & 60 Vict., c. 25

ANNUAL RETURN PRESCRIBED BY THE CHIEF REGISTRAR
FOR A REGISTERED FRIENDLY SOCIETY

Year ending 31st December, 19 .

*[The Society's Balance Sheet cannot be accepted as a substitute for
this Return.]*

This Return is to be sent to the Registrar not later than the 31st of May.

A copy of the Auditors' Report, if any, should also be sent.

Name of Society						
Date of commencement of Society	18 .					
When first Enrolled, Certified, or Registered	18 .					
Names and Addresses of Trustees	<table border="0"> <tr><td rowspan="4">{</td><td>Residing at</td></tr> <tr><td>Residing at</td></tr> <tr><td>Residing at</td></tr> <tr><td>Residing at</td></tr> </table>	{	Residing at	Residing at	Residing at	Residing at
{	Residing at					
	Residing at					
	Residing at					
	Residing at					
Name and Address of Treasurer	Residing at					
Amount of Security given by him	£ <u> </u>					
Number of Benefit Members at the beginning of the year	.					
Number of Benefit Members admitted during the year	.					
	Together					
Number of Benefit Members who died during the year	{					
Number of Benefit Members who left from other causes						
Total number of Benefit Members at the end of the year	<u> </u>					
Of whom	were under 16 years of Age.					
	between 16 and 20 years of Age					
	„ 20 and 50 „ „					
	„ 50 and 65 „ „					
	over 65 years of Age. The Benefits the					
Members over 65 are entitled to are						
Average amount of Funds per Member, that is, the total Funds						
on the 31st December, 19 [divided by the total number of						
Benefit Members]	£ <u> </u>					
The Audit for the year has been conducted by Mr.	, Public					
Auditor [or by	, who were appointed Auditors by					
	under the authority of Rule No.].					
Registered Office of the Society ¹	in the county					
of						
Date	19 .					

¹ State full postal address.

(A). BENEFIT FUND

(a) Specify their nature.

MANAGEMENT FUND¹

Income.

(b) Specify their nature.

(C). BALANCE SHEET OF FUNDS AND EFFECTS

	£	s.	d.	(i) State amount and description of stock.	(k) State them separately.	(l) State in whose hands.	(m) Specify them.
Amount of Benefit Fund (as above)	.	.	.				
Amount of Management Fund (as above).	.	.	.				
Debts (if any) legally incurred by Trustees on behalf of the Society (c)	.	.	.				
Cash due to Treasurer (if any)	.	.	.				
Other Liabilities (d)	.	.	.				
Total	£						
Investments—							
1. In the Savings Bank							
2. In the Public Funds (i)							
3. With the Commissioners for the Reduction of the National Debt							
4. Upon Government Securities in Great Britain or Ireland							
5. Upon Real Securities in Great Britain or Ireland							
6. In Land							
7. On other Securities (k)							
Cash in Post Office Savings Bank							
Cash in hand (l)							
Other Assets (if any) (m)							
Total	£						

1 Give Postal Address.

Residing at ¹

Signature of Secretary

Signature of Treasurer

The undersigned, having had access to all the Books and Accounts of the Society, and having examined the foregoing General Statement and verified the same with the Accounts and Vouchers relating thereto, now sign the same as found to be correct, duly vouched, and in accordance with law.

Signature of 1st Auditor
[or of Public Auditor]

Signature of 2nd Auditor

Address

Address

Date _____

19.

Calling or Profession

Calling or Profession

N.B.—Societies to which this Form applies need not fill up Form A.

FORM B.—FOR SOCIETIES WHOSE MEMBERS PAY MORE THAN ONE CONTRIBUTION FOR BENEFITS.

Income.

(D). BENEFIT FUNDS

Expenditure.

Where these contributions are not divided the lines may be bracketed together.	£ s. d.		£ s. d.		£ s. d.		(7) If any further reductions they should be stated separately.
	£	s.	d.	£	s.	d.	
Entrance Fees (belonging to Benefit Funds) .							
Contributions of Members (Total) divided as under—							
For Sickness				weeks pay to (last) by Rules			
For Sums at Death				weeks pay to Members on reduced pay (1st period lasting weeks)			
For Old Age Pay				weeks pay to Members on reduced pay (2nd period lasting weeks) (7)			
For Widows' and Orphans' Allowances				of Members and Children of Members above 10 years of age			
For Lying-in				of Wives (or Husbands) of Members under 5 years of age			
For Accidents				of Children between 5 and 10 years of age			
For Travelling Benefit				Old Age Pay			
For Distress Relief				Widows' and Orphans' Allowances			
For Medical Aid				Lying-in Pay			
For (1)				Accident Allowances			
(1) Other benefits (if any) for which separate contributions are paid should be stated separately.				Travelling Benefit			
Total as shown above	£			Distress Relief			
				Medical Aid			
				Payments for other Benefits (if any) (8)			
				Other Payments (if any) (9)			
Levies (state for what purpose)				Total Expenditure			
Fines belonging to Benefit Funds				Amount of Benefit Funds at the end of the year, as per Balance Sheet (F)			
Interest on Investments of Benefit Funds				Total £			
Other Receipts (if any) (2)							
Total Income							
Amount of Benefit Funds at the beginning of the year							
Total	£						

<i>Income.</i>		(E). MANAGEMENT FUND*		<i>Expenditure.</i>		(10) Specify their nature.
£	s. d.	£	s. d.	£	s. d.	
Total						
* If the Society was Registered before 23rd July, 1855, and has no separate Management Fund provided for in its Rules, state the fact.						
Donations of Honorary Members appropriated to this Fund				Salaries		
Contributions of Members for Management				Rent		
Levies upon Members for Management				Printing, Stationery, and Postage		
Entrance Fees				Other Payments (if any) ⁽¹⁰⁾		
Fines appropriated to this Fund by the Society's Rules				Total Expenses of Management		

(3) Specify their nature.	Interest on Investments of Management Fund Other Receipts (if any) ⁽³⁾		Bad Debts and Losses ⁽¹⁰⁾	(10) Specify their nature.
	Total Income		Total Expenditure	
	Amount of Management Fund at the beginning of the year		Amount of Management Fund at the end of the year, as per Balance Sheet (F)	
	Total	£	Total	£

(F). BALANCE SHEET OF FUNDS AND EFFECTS										Cr.																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																											
Dr.	Total Benefit Funds [as per Account (D)] divided as under—				Investments—				Rate per cent. of interest yielded.	£	s.	d.	(11) State amount and description of stock.																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																								
	(4) Where these funds are not divided the lines may be bracketed together.	Sickness Fund ⁽⁴⁾	Death Fund	Old Age Fund	Widows' and Orphans' Fund	Lying-in Fund	Accident Fund	Travelling Benefit Fund						Distress Relief Fund	Medical Aid Fund	1. In the Savings Bank	2. In the Public Funds ⁽¹¹⁾	3. With the Commissioners for the Reduction of the National Debt	4. Upon Government Securities in Great Britain or Ireland.	5. Upon Real Securities in Great Britain or Ireland	6. In Land	7. On other Securities ⁽¹²⁾	Cash in the Post Office Savings Bank	Cash in hand ⁽¹³⁾	Other Assets (if any) ⁽¹⁴⁾	(12) State them separately. £	(13) State in whose hands	(14) Specify them.																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																									

Signature of Treasurer
The undersigned, having had access to all the Books and Accounts of the Society, and having examined the foregoing General Statement, and verified the same with the Accounts and Vouchers relating thereto, now sign the same as found to be correct, duly vouched, and in accordance with law.

Signature of 1st Auditor
[or of Public Auditor]
Address
Calling or Profession

Signature of 2nd Auditor
Address
Calling or Profession

Date

Residing at ¹
1 Give Postal Address.

If the Accounts are not audited by a Public Auditor appointed under the *Friendly Societies Act*, two persons, at least, must be appointed as Auditors. If in any respect these Accounts are incorrect, unvouched, or not in accordance with law, the Auditors are not to sign as above, but are to make a Special Report to the Society, of which a copy is to be sent to the Registrar with this Statement.

FORMS OF ACCOUNTS PRESCRIBED FOR ELECTRIC LIGHTING UNDERTAKINGS

-----ELECTRIC LIGHTING ORDER (LICENCE)

THE

COMPANY.

Year ending 31st December, 19 .

STATEMENT OF SHARE CAPITAL APPROPRIATED FOR THE PURPOSES OF THE UNDERTAKING AUTHORIZED BY THE ABOVE-MENTIONED ORDER (LICENCE)

No. I.

On the 31st December, 19 .

Description of Capital.	Authorized by	Number of Shares issued.	Nominal Amount of Share.	Called up per Share.	Total Paid up.	Issued not Paid up.	Remaining Unissued.	Total Amount. Authorized.

STATEMENT OF LOAN CAPITAL APPROPRIATED FOR THE PURPOSES OF THE UNDERTAKING AUTHORIZED BY THE ABOVE-MENTIONED ORDER (LICENCE)

No. II.

On the 31st December, 19 .

Description of Loan.	Amounts borrowed.			Remaining Borrowing Powers.	Total Amount of Borrowing Powers.
	At %.	At %.	At %.		

Total Share Capital Paid up, see No. I. . £

 " Loan " Borrowed, see No. II . . £

Total Capital received . . £

CAPITAL ACCOUNT
For the Year ending 31st December, 19

Dr.

No. III.

	Expenditure up to 31 Dec., 19 .	£	s.	d.	Expenditure during the Year.	£	s.	d.	Total Expenditure to 31 Dec., 19 .		Receipts up to 31 Dec., 19 .	£	s.	d.	Receipts during Year.	£	s.	d.	Total Receipts to 31 Dec., 19 .
<i>To expenditure to 31st Dec., 19 .</i>		£	s.	d.		£	s.	d.				£	s.	d.		£	s.	d.	
<i>Expenditure since that date.</i>																			
1. To Lands, including Law Charges incidental to acquisition.																			
2. " Buildings																			
3. " Machinery																			
4. " Accumulators at Generating and Distributing Stations																			
5. " Mains, including cost of laying the Mains																			
6. " Transformers, Motors, etc.																			
7. " Meters, and Fees for certifying under the Act																			
8. " Electrical Instruments, etc.																			
9. " General Stores (Cable, Mains, Lamps)																			
10. " purchase of Patents or Patent Rights																			
11. " Cost of Licence, Provisional Order, etc.																			
12. " Special Items																			
Total Expenditure																			
To Balance of Capital Account																			

Provision for depreciation of works is made by a debit of £ to Revenue Account, transferred to Depreciation Fund Account, No. VII.

Dr.
No. IV.

REVENUE ACCOUNT
For the Year ending 31st December, 19

Cr.

	£ s. d.	£ s. d.	£ s. d.	£ s. d.
<i>A.—To generation of Electricity.</i>				
1. To Coals or other Fuel, including Dues, Carriage, Unloading, Storing, and all Expenses of placing the same on the works				1. By Sale of Current per Meter, at per B.T.U.
2. " Oil, Waste, Water, and Engine-room Stores				2. " Sale under Contracts
3. " proportion of Salaries of Engineers, Superintendents, and Officers, as certified by the Managing Director, Chairman, or Engineer				3. " By Public Lighting
4. " Wages and Gratuities at Generating Stations				4. " Rental of Meters and other Apparatus on Consumers' Premises
5. " Repairs and Maintenance, as follows—				5. " Sale and Repairs of Lamps, Arc or Incandescent
1. Buildings	£ s. d.			" Sale and Repairs of other Apparatus
2. Engines, Boilers				6. " Royalties, Licences, etc.
3. Dynamoes, Exciters, Transformers, Motors, etc.				7. " Rents Receivable
4. Other Machinery, Instruments, and Tools				8. " Transfer fees
5. Accumulators and Accessories				9. " other Items (to be specified)
Less received for Old Material				
6. " Special Items				
Carried forward				Carried forward

REVENUE ACCOUNT—cont.

Dr.

No. IV.—cont.

	£	s.	d.	£	s.	d.	£	s.	d.
Brought over									
B—To <i>Distribution of Electricity</i> .									
1. To proportion of Salaries of Superintendents and Officers, as certified by Managing Director, Chairman, or Engineer									
2. " Wages and Gratuities to Linesmen, Fitters, Labourers									
3. " Repairs Maintenance, and Renewals of Mains of all classes, including Materials and laying the same									
Less amounts refunded									
4. To Repairs, Maintenance, and Renewals of Transformers, Meters, Switches, Fuses, and other Apparatus on Consumers' premises									
5. " Repairs, Maintenance, and Renewals of Apparatus at Distributing Stations									
C.—To <i>Public Lamps</i> .									
1. To Attending and Repairs									
2. " Renewals of Lamps									
Carried forward									
Brought over									
Carried forward									

Dr.

No. IV.—*cont.*

REVENUE ACCOUNT

Cr.

	£	s.	d.	£	s.	d.	£	s.	d.
Brought over							Brought over		
D.— <i>To Royalties, etc.</i>									
1. To Royalties, etc., payable for use of Patents or Patent Processes									
E.— <i>To Rents, Rates, and Taxes.</i>									
1. To Rents Payable									
2. „ Rates and Taxes									
F.— <i>To Management Expenses.</i>									
1. To Directors' Remuneration									
2. „ Salaries of Managing Engineers, Secretary, Accountants, Clerks, Messengers, as certified by Managing Director, Chairman, or Engineer									
3. „ Salaries or Commissions of Collectors									
4. „ Stationery and Printing									
5. „ General Establishment charges									
6. „ Auditors of Company									
7. „ Auditor appointed under the provisions of the Order									
Carried forward							Carried forward		

No. IV.—*cont.*

Dr.

REVENUE ACCOUNT—*cont.*

Cr.

	£	s.	d.	£	s.	d.	£	s.	d.
Brought over							Brought over		
G.— <i>To Law and Parliamentary Charges.</i>									
1. To Law Expenses									
H.— <i>To Depreciation.</i>									
1. To Depreciation in respect of Leasehold Works									
2. " Depreciation in respect of Buildings									
3. " Depreciation in respect of Plant, Machinery, etc.									
I.— <i>To Special Charges.</i>									
1. To Insurances, Superannuation, etc.									
2. " Expenses for Certification of Meters									
Total Expenditure									
Balance carried to Net Revenue				£				£	

Cr.

NET REVENUE ACCOUNT

Dr.
No. V.

Dr.	£ s. d.	£ s. d.	£ s. d.	£ s. d.
1. To Interest on Debentures accrued due to date		1. By Balance from last Account		
2. " Interest on Mortgages and Bonds accrued due to date		Less Dividend paid		
3. " Interest on Temporary Loans accrued due to date		Amount carried to Reserve Fund		
4. " Dividend on Preference Stocks		2. " Balance brought from Revenue Account (No. IV)		
5. " Balance applicable to Dividend on Ordinary Stock or Shares		3. " Interest on Money at Deposit		

Cr.

RESERVE FUND ACCOUNT

Dr.
No. VI.

	£ s. d.	£ s. d.
1. Amount paid out for	.	1. By Balance brought from last Account .
2. Amount of Balance to next Account	.	2. „ Amount brought from Net Revenue Account
		3. „ Interest on Amount Invested .
		(Description of Investments to be specified.) ..
	£	£

711

Cr.

DEPRECIATION FUND ACCOUNT

Dr.
No. VII.

	£ s. d.	£ s. d.
1. To Balance	1. By Balance from last Account
	.	2. „ Interest on Investments
	.	3. „ Amount brought from Revenue Account
	.	(see No. IV, H.)
	.	(Description on Investments to be specified.)
	£	£

COLLECTING SOCIETIES AND INDUSTRIAL ASSURANCE
COMPANIES ACT, 1896
59 & 60 Vict., c. 26

ANNUAL RETURN PRESCRIBED BY THE CHIEF REGISTRAR
FOR A REGISTERED COLLECTING SOCIETY

Year ending 31st December, 19 .

This Return is to be sent to the Registrar not later than 31st May following.

A copy of the Auditors' Report, if any, should also be sent.

Name of Society		
Date of Commencement of Society	18 .	
When first Enrolled, Certified, or Registered	18 .	
Names and addresses of { Trustees {	Residing at Residing at Residing at	[If the names are more than can be conveniently inserted here, they may be added (with the amount of security given) on a separate sheet.]
Name and address of { Treasurer and of any other Officer in receipt or charge of money . {	Residing at Residing at Residing at	
Amount of Security given by him or them	£	
Number of Benefit Members at the beginning of the year	
Number of Benefit Members admitted during the year . . . . .	.
Together		
Number of Benefit Members who died during the year	}	}
Number of Benefit Members who left from other causes	}	
Total number of Benefit Members at the end of the year		
Average amount of Funds per Member [that is, the total Funds on 31st December, 19 , divided by the total number of Benefit Members] £		
Number of Notices of forfeiture during the year		
Number of cases of forfeiture of benefit after notice		
Dates of the General Meetings held during the year		
Number of transfers to the Society of which it has given notice to the Society from which the transfer was sought		
Number of transfers from the Society of which it has received notice from the Society by which the transfer was sought		
The Audit for the year has been conducted by Mr. , Public Auditor [or by who were appointed Auditors by under the Authority of Rule No.].		
Registered Office of Society* of		in the County
Date	19 .	

N.B.—The Society's Balance Sheet cannot be accepted as a substitute for this return, although, if made up to the 31st December, the items composing it may, if applicable, be inserted in the return.

* State full postal address.

GENERAL ACCOUNT

		<i>Income.</i>				<i>Expenditure.</i>	
		£	s. d.	£	s. d.	£	s. d.
Contributions under Tables—							
For Sickness		.	.			weeks pay to members on full pay (lasting by rules weeks)	
Sums at Death		.	.			weeks pay to members on reduced pay (1st period lasting weeks)	
Annuities		.	.			Of members and children of members above 10 years of age—	
Endowments		.	.			Full sums assured	
Medical Aid		.	.			Grants or other diminished payments	
Other Benefits (specify them)—		.	.			Of wives [or husbands] of members—	
		.	.			Full sums assured	
Contributions for Management		.	.			Of Grants or other diminished payments	
Entrance Fees		.	.			children under 5 years of age—	
Fines		.	.			Full sums assured	
Donations of Honorary Members.		.	.			Grants or other diminished payments	
Interest on Investments		.	.			Annuitants	
Amount received for copies of Rules at .d. each		.	.			Endowments	
Amount received for Policies at .d. each		.	.			Cost of Medical Aid	
Other Receipts (specify them)—		.	.			Other Payments (specify them)—	
		.	.			Amount transferred to Management Fund	
		.	.			Total	
Amount of Benefit Funds at beginning of year		.	.				
		.	.			Amount of Benefit Funds at end of year, as per Balance Sheet	
Total		.	.			Total	

MANAGEMENT FUND.

		<i>Income.</i>				<i>Expenditure.</i>	
		£	s. d.	£	s. d.	£	s. d.
Amount transferred from General Account, as detailed below (A)—							
per cent. on New Members' Contributions,						Salaries of Committee and Treasurer.	
under Table No.		.	.			Salaries of Secretary, Clerks, and Servants	
Under Table No.		.	.			Commission at per cent and other remuneration of Agents and Collectors	
Under Table No.		.	.			Travelling Expenses	
Under Table No.		.	.			Law Charges	
Under Table No.		.	.			Actuarial Fees	
per cent. on other Members' Contributions, under Table No.		.	.			Remuneration of Auditors	
Under Table No.		.	.			Rent and Taxes	
Under Table No.		.	.			Printing	
Under Table No.		.	.			Stationery	
Under Table No.		.	.			Postage and Carriage of Parcels	
Under Table No.		.	.			Other Payments (specify them)—	

INDUSTRIAL AND PROVIDENT SOCIETIES ACT, 1893

56 & 57 Vict., c. 39

ANNUAL RETURN PRESCRIBED BY THE CHIEF REGISTRAR FOR SOCIETIES CARRYING ON INDUSTRIES AND TRADES UNDER THE ABOVE ACT

Year ending 31st December, 19 .

This Return is to be sent to the Registrar on or before the 31st of March, 19 .

A copy of the Auditors' Report, if any, is also to be sent.

Name of Society, Limited.
 Industries carried on by Society (Productive)
 Trades carried on by Society (Distributive)
 Date of Establishment
 When first Registered
 Name and Address of every Officer in receipt
 or charge of money, and amount of } £
 Security given by each } £

Number of Members at the beginning of the year
 Number of Members admitted during the year

Together

Number of Members whose membership has ceased during the year

Number of Members at the end of the year

Do the Rules of the Society allow of Credit being given? If so, state the number of the Rule.

Does the Society give Credit? If so, to what limit?

The Audit for the year has been conducted by Mr., Public Auditor [or
 by who were appointed Auditors by
 under the authority of Rule No.].

Registered office of Society¹ in the County of
 Date 19

PARTICULARS OF PRODUCTIVE OPERATIONS CARRIED ON BY THE SOCIETY DURING THE YEAR

Value of Productions for the year (Cost Price) £
 Average Number of Workmen employed
 Amount of Wages paid (exclusive of Bonus) £
 Bonus to Labour £

DETAILS OF THE ABOVE PARTICULARS IN RESPECT OF THE VARIOUS DEPARTMENTS OF THE SOCIETY:—

DEPARTMENT.	Value of Productions.	Average Number of Workmen employed.	Amount of Wages paid.	Labour.	OBSERVATIONS.
[Here specify the Department.]	£		£	£	
Total as above					

¹ State full postal address.

Dr.

I. CASH ACCOUNT

Cr.

	£	s.	d.		£	s.	d.
RECEIPTS.				PAYMENTS.			
Share Contributions				Share Capital Repaid			
Loans				Interest on Shares			
Deposits and Small Savings Department				Dividend to Members			
Sales of Goods				" Non-members			
Rents				Loans			
Fees and Fines: Entrance, Nomination, Withdrawal				Deposits and Small Savings Department			
Rules and Pass or Contribution Books				Interest on Loans and Deposits and Bank Current Advances			
Interest and Profits on Investments				Goods, including Carriage			
Dividend on Purchases				Expenses of Management—			
Educational Purposes				Salaries and Wages			
Investments—Deposits and Repayments of Advances on Security of Freehold or Leasehold Property				Rent, Rates, Taxes, and Insurance			
Other Investments Realized or Advances repaid				Other Expenses			
Other Receipts (if any) (1)—				For Land, Buildings, and Fixtures—			
				For Trade Purposes			
				For other Purposes			
				Advances on Security of Freeholds or Leaseholds			
				Other Advances or Investments			
				Educational Purposes			
				Subscriptions to Charitable and other Objects			
				Other Payments (if any) (1)—			
Total Receipts				Total Payments			
Balance (if any) due to Bankers at end of year				Balance (if any) due to Bankers at beginning of Year			
Balance of Cash in hand and at Bank at beginning of year				Balance of Cash in hand and at Bank at end of year, as per Balance Sheet (III)			
Total £				Total £			
(1) To be specified.				(1) To be specified.			

II. GENERAL ACCOUNTS

A.—TRADE OF YEAR

	£	s.	d.		£	s.	d.
INCOME.				EXPENDITURE.			
Value of Stock-in-Trade at beginning of Year				Value of Stock-in-Trade at end of Year			
Purchases during Year, including Carriage				Sales of Goods during Year			
(2) Productive Expenses incurred in the Industries carried on by the Society				Dividend on Purchases			
(2) Distributive Expenses incurred in the Trades carried on by the Society							
Interest on Loans, Deposits, and Bank Current Advances							
Depreciation—Land, Buildings, and Fixtures							
Balance Profit on Trade of Year, to Account B				Balance Loss on Trade of Year, to Account B			
Total £				Total £			

(2) These amounts should include Salaries and Wages and all other Productive or Distributive Expenses, respectively, incurred during the Year.

Dr.

B.—PROFIT AND LOSS

Cr.

	£	s.	d.		£	s.	d.
Balance of Loss brought forward from last year				Balance of Profit brought forward from last year			
Loss on Trade of Year from Account A				Profit on Trade of Year, from Account A			
Bad Debts				Interest and Profits on Investments			
Expenses not chargeable to Trade (specify them)				Fees and Fines: Entrance, Nomination, Withdrawal			
Balance disposal to Account C				Other Credits (if any), specify them			
				Balance of Loss, as per Account III			
Total	£			Total	£		

C.—APPLICATION OF PROFIT

	£	s.	d.		£	s.	d.
Interest on Shares				Balance Disposable from Account B			
Dividends on Purchases—							
To Members							
„ Non-members							
Bonus to Employés							
Donations and Subscriptions							
Educational Purposes							
Reserve Fund							
Other Applications							
Profit carried to next Year, as per Account III							
Total	£			Total	£		

III.—BALANCE SHEET OF FUNDS AND EFFECTS

	£	s.	d.		£	s.	d.
Due to Shareholders				Value of Stock-in-Trade (as in Account A)			
Due to Depositors and Other Creditors—				Buildings, Fixtures, and Land used in Trade			
Loans	£	s.	d.	Investments and other Assets—	£	s.	d.
Deposits and Small Savings Department				In Buildings, Fixtures, and Land			
Bank Advances				On Freehold or Leasehold Security			
Cash due to Treasurer				On Loans or Deposits			
Trade Debts				In Shares of Industrial & Provident Societies			
Other Liabilities (1)—				In other Shares (2)—			
Profits appropriated but not yet paid, included in Account C				Other Investments (2)—			
Total				Other Securities or Assets (2)—			
Reserve Fund				Amount (if any) owing by Members at end of Year			
Profit carried to next Year, as per Account C				Cash in Bank			
Total				„ hand (3)			
Total Liabilities	£			Total			
(1) To be specified.				Loss carried to next Year, as per Account B			
				Total Assets	£		
				(2) State them separately.			
				(3) State in whose hands.			

Signature of Treasurer

Signature of Secretary

Residing at

The undersigned, having had access to all the Books and Accounts of the Society, and having examined the foregoing General Statement, and verified the same with the Accounts and Vouchers relating thereto, now sign the same as found to be correct, duly vouched, and in accordance with law.

Signature of 1st Auditor

Signature of 2nd Auditor

(or of Public Auditor)

Address

Address

Calling or Profession

Calling or Profession

Date

19 .

If the Accounts are not audited by a Public Auditor, appointed under the *Industrial and Provident Societies Act*, two persons, at least, must be appointed as Auditors.

If in any respect these Accounts are incorrect, unvouched, or not in accordance with law, the Auditors are not to sign as above, but are to make a Special Report to the Society, of which a copy is to be sent to the Registrar with this Statement.

RECEIPTS AND PAYMENTS ACCOUNT (PRO FORMÁ) OF A MINING COMPANY

Particulars of Receipts.	Receipts previous to period under Audit.			Receipts for period under Audit.			Total Receipts to date.			Particulars of Payments.	Expenditure previous to period under Audit.			Expenditure for period under Audit.			Total Expenditure to date.		
	£	s.	d.	£	s.	d.	£	s.	d.		£	s.	d.	£	s.	d.	£	s.	d.
Shareholders' Capital										Purchase of Mine, Buildings, Plant, etc.									
Mortgages										Plant and Machinery									
Debentures										Wages									
Sales										Royalties									
Freight and Wagons										Stores									
Transfer Fees										Directors' Fees, Salaries, and Office Expenses									
										Furniture, Fittings, Fixtures, etc. Freight, Carriage, etc.									
										Wagon Hire and Instalments on Wagons on Purchase Lease									
										Interest on Mortgages and Debentures									
										Dividends to Shareholders									
										Preliminary Expenses									
										Balance at Bankers and in hand									

REVENUE ACCOUNT (PRO FORMÂ) OF A MINING COMPANY

Divided into three Sections, as recommended on page 478

	£	s.	d.		£	s.	d.
To Stock of Minerals on hand (at commencement of period) .				By Sales			
„ Stores on hand (at commencement of period) .				„ Stock of Minerals on hand (at end of period)			
„ Wages				„ Stores on hand (at end of period)			
„ Royalties							
„ Stores purchased							
„ Balance carried down, being the gross Profit							
„ Directors' Fees				„ Balance brought down			
„ Salaries				„ Transfer Fees			
„ Rent, Rates, etc.				„ Extra Earnings of Wagons (including proportion of instalments paid on Wagons on Purchase Lease charged against Revenue)			
„ Office Expenses							
„ Interest on Mortgages							
„ Interest on Debentures							
„ Amount written off for Depreciation on Buildings, Plant, etc.							
„ Bad Debts							
„ Amount written off Preliminary Expenses Account							
„ Balance carried down, being the net Profit for the period				„ Balance carried down, being the net Loss for the period			
„ Balance brought down, being the net Loss for the period				„ Balance brought down, being the net Profit for the period			
„ Balance brought from previous Revenue Account (deficiency at that date)				„ Balance brought from previous Revenue Account (surplus at that date)			
„ Interim Dividend							
„ Proposed Dividend at per cent. per annum							
„ Balance carried to Balance Sheet, being amount of Undivided Profit at end of the Period				„ Balance carried to Balance Sheet, being deficiency at this date			

BALANCE SHEET (PRO FORMÂ) OF A MINING COMPANY

To Capital—	£	s.	d.	£	s.	d.
Authorized issue—						
.....Shares of £..... each: £.....						
Subscribed—						
.....Shares						
Less Amount uncalled						
" Calls in Arrear						
Mortgages						
" Debenture Holders						
" Creditors—						
On Open Accounts						
" Bills Payable						
Shareholders' Interest—						
Outstanding						
Balance brought from Revenue						
Account, being the sur-						
plus or amount of Un-						
divided Profit at this date						
By Debtors						
Bills receivable on hand						
Cash at Bankers						
Cash in hand						
Stock of Minerals, at cost price						
Colliery Stores do.						
Office Furniture						
Purchase of Mine, Buildings, Plant,						
etc.						
Balance of this Account						
Additions to do.						
Less per cent. written off for						
depreciation						
Instalments on Wagons, on Purchase						
Lease, after deducting amount						
charged against Revenue Account						
Preliminary Expenses—						
Balance of this Account						
Less th of original Amount.						
Balance brought from Revenue Account,						
being the deficiency at this date						

THE COMPANIES ACTS, 1908-1917

FORM E, as required by Part II
of the Companies (Consolidation) Act, 1908 (Section 26.)

SUMMARY of SHARE CAPITAL and SHARES of the COMPANY, LIMITED,
made up to the day of 19 (being the fourteenth day
after the date of the first Ordinary General Meeting in 19).

Nominal Share Capital £	divided into . }	Shares of £	each.
		Shares of £	each.
Total Number of Shares taken up ¹ to the day of	} total shown in the list as held by existing Members }		
19 , (which number must agree with the			
Number of Shares issued subject to payment wholly in cash			
Number of Shares issued as fully paid up otherwise than in cash			
Number of Shares issued as partly paid up to the extent of per	} Share otherwise than in cash }		
² There has been called up on each of Shares, £			
There has been called up on each of Shares, £			
² There has been called up on each of Shares, £			
³ Total Amount of Calls received, including payments on Applica- tion and Allotment	} £		
Total amount (if any) agreed to be considered as paid on Shares	} which have been issued as fully paid up otherwise than in cash }		
Total Amount (if any) agreed to be considered as paid on Shares	} which have been issued as partly paid up to the extent of }		
per Share			
Total Amount of Calls unpaid		£	
Total amount (if any) of sums paid by way of Commission in respect of Shares or Debentures or allowed by way of discount	} since date of last Summary }		
Total Amount (if any) paid on ⁴ Shares forfeited		£	
Total Amount of Shares and Stock for which Share Warrants are outstanding	} £		
Total Amount of Share Warrants issued and surrendered respec- tively since the date of last Summary	} £		
Number of Shares or amount of Stock comprised in each Share Warrant			
Total Amount of Debt due from the Company in respect of all Mort- gages and Charges which are required (or, in the case of a Com- pany registered in Scotland, which, if the Company had been registered in England, would be required) to be registered with the Registrar of Companies, or which would require registration if created after the first day of July, nineteen hundred and eight	} £		

STATEMENT in the form of a Balance Sheet made up to the day of
19 , containing the particulars of the Capital, Liabilities, and Assets of the
Company.

¹ When there are shares of different kinds or amounts (*e.g.*, Preference and Ordinary, or £10 or £5), state the numbers and nominal values separately.

² Where various amounts have been called, or there are shares of different kinds, state them separately.

³ Include what has been received on forfeited as well as on existing shares.

⁴ State the aggregate number of shares forfeited (if any).

The Return must be signed at the end by the Manager or Secretary of the Company.

Presented for filing by—

FORM E.—*continued*

List of Persons holding Shares in the Company, Limited, on the day of 19 , and of Persons who have held Shares therein at any Time since the date of the last Return, showing their Names and Addresses, and an Account of the Shares so held.

Folio in Register Ledger containing particulars.	NAMES, ADDRESSES, AND OCCUPATIONS.				ACCOUNT OF SHARES.				Remarks.
	Surname.	Christian Name.	Address.	Occupation.	Number of Shares held by existing Members at date of Return.	Particulars of Shares transferred since the date of the last Return by Persons who are still Members.		Particulars of Shares transferred since the date of the last Return by Persons who have ceased to be Members.	
						Number.	Date of Registration of Transfer.		

THE COMPANIES (CONSOLIDATION) ACT, 1908

TABLE B

TABLE OF FEES to be paid to the REGISTRAR OF COMPANIES

I.—By a Company having a Share Capital.

	£	s.	d.
For Registration of a Company whose nominal Share Capital does not exceed £2,000	2	0	0
For Registration of a Company whose nominal Share Capital exceeds £2,000, the following fees, regulated according to the amount of nominal Share Capital (that is to say);			
For every £1,000 of nominal Share Capital, or part of £1,000, up to £5,000	1	0	0
For every £1,000 of nominal Share Capital, or part of £1,000, after the first £5,000, up to £100,000	5	0	
For every £1,000 of nominal Share Capital, or part of £1,000, after the first £100,000	1	0	
For Registration of any increase of Share Capital made after the first Registration of the Company, the same fee per £1,000, or part of a £1,000, as would have been payable if the increased Share Capital had formed part of the original Share Capital at the time of Registration:			
Provided that no Company shall be liable to pay in respect of nominal Share Capital, on Registration or afterwards, any greater amount of Fees than £50, taking into account in the case of Fees payable on an increase of Share Capital after Registration the Fees paid on Registration.			
For Registration of any existing Company, except such Companies as are by this Act exempted from payment of Fees in respect of Registration under this Act, the same Fee as is charged for Registering a new Company.			
For Registering any document by this Act required or authorized to be registered, other than the Memorandum or the Abstract required to be filed with the Registrar by a Receiver or Manager or the Statement required to be sent to the Registrar by the Liquidator in a winding up in England	5	0	
For making a record of any fact by this Act required or authorized to be recorded by the Registrar	5	0	

THE COMPANIES (CONSOLIDATION) ACT, 1908

FORM C

FORM OF STATEMENT to be published by Banking and Insurance Companies, and Deposit, Provident, or Benefit Societies.

¹ The Share Capital of the Company is _____, divided into _____ Shares of _____ each.

The number of Shares issued is _____

Calls to the amount of _____ pounds per Share have been made, under which the sum of _____ pounds has been received.

The liabilities of the Company on the first day of January (or July) were—

Debts owing to sundry persons by the Company.

On judgment, £ _____

On specialty, £ _____

On notes or bills, £ _____

On simple contracts, £ _____

On estimated liabilities, £ _____

The Assets of the Company on that day were—

Government Securities, (stating them).

Bills of Exchange and Promissory Notes, £ _____

Cash at the Bankers, £ _____

Other Securities, £ _____

THE INDUSTRIAL AND PROVIDENT SOCIETIES ACT,
1893

FORM OF STATEMENT TO BE MADE OUT BY A SOCIETY
CARRYING ON THE BUSINESS OF BANKING

(See Section 19.)

1. Capital of the Society—

(a) Nominal Amount of each Share.

(b) Number of Shares issued.

(c) Amount paid up on Shares.

2. Liabilities of the Society on the first day of January (or July) last previous—

(a) On judgments.

(b) On specialty.

(c) On notes or bills.

(d) On simple contract.

(e) On estimated liabilities.

3. Assets of the Society on the same date—

(a) Government or other Securities (stating them).

(b) Bills of Exchange and Promissory Notes.

(c) Cash at the bankers.

(d) Other securities.

¹ If the Company has no Share Capital the portion of the Statement relating to Capital and Share must be omitted.

Conditions under which Public Auditors hold their Appointments under the Friendly Societies Act, 1896, and the Industrial and Provident Societies Act, 1893 to 1913.

1. Public Auditors are appointed to act in England and Wales, Scotland *or* Ireland. They will not, however, be ranked as public servants, and will have no salaries, nor will they have any claim to pension or gratuity. They are not to assume the title of "Government Auditors" or any similar one; but are to describe themselves as "Public Auditors under the Friendly Societies Act, 1896, and the Industrial and Provident Societies Act, 1893." Public Auditors are not permitted to make any use of the Royal Arms.

2. The Public Auditor is bound to accept for audit, for the fees indicated below, the accounts of any Society, except as hereinafter mentioned (the term "Society" to include a branch of a Society), which is registered under either the Friendly Societies Act, 1896, or the Industrial and Provident Societies Acts, 1893 to 1913, and situated in that part of the United Kingdom for which he is appointed, provided that the Society complies with the terms of these instructions. No Public Auditor can audit the accounts, balance-sheet, or Annual Return of any Society of which he is accountant.

3. A Society desirous of submitting its accounts to a Public Auditor must forward all the necessary materials, including a copy of the registered Rules of the Society and the annual return of the income and expenditure, funds and effects of the Society, made up in the form prescribed for the time being, to his address given in the List of Public Auditors. A Public Auditor is not bound to leave his office for the purpose of the audit.

4. The Auditor is to verify the Annual Return with the accounts and vouchers relating thereto, and must have regard to the rules of the Society, and either sign the Annual Return as found by him to be correct, duly vouched, and in accordance with law, or specially report to the Society in what respects he finds it incorrect, unvouched, or not in accordance with law. He will also be required to initial any alterations in the Annual Return which may be necessary for the requirements of the Chief Registrar.

5. The work of the Auditor will be confined to auditing, but he has under the Acts a right of access to all the books, accounts, and official documents of the Society. Should there be errors in the Annual Return, or in the books, accounts, or vouchers submitted to him, the documents, etc., etc., are to be returned (at the cost of the Society) for correction, unless the Auditor be requested by the Society to correct the inaccuracies, in which case he is entitled to claim an additional fee, to be arranged between him and the Society.

6. Rates of payment.—See pages 39 and 40.

7. The scales of fees apply to all Societies situated in that part of the United Kingdom for which the Auditor is appointed.

If a Society employs an Auditor appointed for another part of the United Kingdom special terms may be arranged.

The Auditor may accept audits on terms lower than those of the above scale.

8. Auditors shall hold their appointments from year to year, dating from the first day of January in each year. The Treasury reserves entire discretion as to reappointing them.

9. Every Public Auditor shall send to the Chief Registrar of Friendly Societies not later than the first day of May in each year, a Return of the audits conducted on the accounts of the preceding financial year, as defined by Section 27 of the Friendly Societies Act, 1896, and Section 3 of the Industrial and Provident Societies (Amendment) Act, 1913. The Return must contain

the names of the Societies whose accounts were audited, the number of members, etc., and the fee received from each Society. If no audits have been conducted the word "Nil" must be written in the space provided on the front page of the form, which must be signed at the foot.

10. The appointment of Public Auditor does not qualify the holder for undertaking valuation business, and it must not be used for obtaining such work.

11. A Public Auditor who fails to comply with any of the Instructions or Conditions hereinbefore contained is liable to be disqualified for reappointment.

12. The scales of fees above laid down will remain in force only as from year to year. At the end of any year they may be confirmed or altered in such manner as the Treasury may direct.

13. Auditors are requested to make themselves acquainted with the provisions of the Friendly Societies Act, 1896, and of the Industrial and Provident Societies Acts, 1893 to 1913, which affect the exercise of their functions and with the Rules of the Societies whose accounts are submitted to them for audit. Their attention is particularly directed to Sections 26, 27, 84 and 88 of the Friendly Societies Act, 1896, and to Sections 13, 14, 62 and 65 of the Industrial and Provident Societies Act, 1893, and to Sections 2, 3, and 4 of the Industrial and Provident Societies (Amendment) Act, 1913.

14. Apart from the above arrangement, the Auditors of the Local Government Board are authorized to exercise the functions of Public Auditors in their respective districts, subject to having obtained the sanction of that Board, but are not bound to accept any accounts for audit.

15. A Public Auditor, not being also a Public Valuer, who desires to value Societies registered under the Friendly Societies Act, must be either an Associate or a Fellow of the Institute of Actuaries in England or a Fellow of the Faculty of Actuaries in Scotland; and if a Public Auditor is found, after the issue of the present conditions, to have valued any such Society without being so qualified, he will be struck off the list of Public Auditors.¹

16. A Public Auditor qualified under these conditions to value Societies registered under the Friendly Societies Act must in every case strictly conform to Nos. 5 to 13 inclusive of the instructions issued by the Treasury to Public Valuers appointed under the Act, and in making valuations for Societies shall not describe himself otherwise than as Associate or Fellow of the Institute of Actuaries or as Fellow of the Faculty of Actuaries, as the case may be.

17. A Public Auditor who has been found to have solicited business, whether audits or valuations, by advertisement, circular, or other similar means, or by offering commission or other inducement to officers or to members of Societies or to other persons, will be struck off the list of Public Auditors.

¹ No valuation of the assets and liabilities of a Society or branch shall be deemed to be a valuation under the Act when the person by whom the same is made (whether a Public Auditor, qualified in accordance with condition 15, or any other person) has audited the accounts of the Society or Branch for the last year of the valuation period.

TABLE

For ascertaining the amount to be charged annually against the Revenue Account and written off a Lease Account in order to exhaust the same at the expiration of such Lease, with interest at 3, 4, 5, 6, 7, 8, 9 or 10 per cent. per annum.

Also for ascertaining the value of a Lease at the above several rates of interest.

The rate per cent. is, of course, contingent upon many circumstances, but it may be a guide to state that in cases of compensation the Metropolitan Board of Works allow interest to be calculated at the rate of 6 per cent. per annum.

 EXAMPLES

1. A Company purchases the seven years' Lease of its business premises for £3,476 10s.

Required the sum which should be charged annually against the Revenue Account until the expiration of the Lease.

Interest at 6 per cent. per annum.

$$£3,476\ 10s. = £3,476\cdot5$$

Divide 3,476·5 by 5·582, the number in the 6 per cent column on the same line with 7 in the years column in the table. This gives 622·805, or £622 16s. 1d., the sum required.

The Lease Account as it should appear in the Ledger is given on p. 732.

2. A Lease for fourteen years to make 7 per cent. and to get back the Principal is worth 8·745 or $8\frac{3}{4}$ years' purchase of the Clear Annual Rent.

The Clear Annual Rent is ascertained by deducting from the estimated or improved Rent the reserved Rent, if any, and all Taxes and other annual charges.

TABLE

Years.	YEARS' PURCHASE.								Years.
	3 per cent.	4 per cent.	5 per cent.	6 per cent.	7 per cent.	8 per cent.	9 per cent.	10 per cent.	
$\frac{1}{2}$	·489	·485	·482	·479	·475	·472	·469	·465	$\frac{1}{2}$
1	·971	·962	·952	·943	·935	·926	·917	·909	1
$1\frac{1}{2}$	1·446	1·428	1·411	1·395	1·379	1·363	1·347	1·332	$1\frac{1}{2}$
2	1·913	1·886	1·859	1·833	1·808	1·783	1·759	1·736	2
$2\frac{1}{2}$	2·374	2·335	2·297	2·259	2·223	2·188	2·154	2·120	$2\frac{1}{2}$
3	2·829	2·775	2·723	2·673	2·624	2·577	2·531	2·487	3
$3\frac{1}{2}$	3·276	3·207	3·140	3·075	3·012	2·952	2·893	2·836	$3\frac{1}{2}$
4	3·717	3·630	3·546	3·465	3·387	3·312	3·240	3·170	4
$4\frac{1}{2}$	4·152	4·045	3·942	3·844	3·750	3·659	3·572	3·488	$4\frac{1}{2}$
5	4·580	4·452	4·329	4·212	4·100	3·993	3·890	3·791	5
$5\frac{1}{2}$	5·002	4·851	4·707	4·570	4·439	4·314	4·194	4·080	$5\frac{1}{2}$
6	5·417	5·242	5·076	4·917	4·767	4·623	4·486	4·355	6
$6\frac{1}{2}$	5·827	5·626	5·435	5·255	5·083	4·920	4·765	4·618	$6\frac{1}{2}$
7	6·230	6·002	5·786	5·582	5·389	5·206	5·033	4·868	7
$7\frac{1}{2}$	6·628	6·371	6·129	5·901	5·685	5·482	5·289	5·107	$7\frac{1}{2}$
8	7·020	6·733	6·463	6·210	5·971	5·747	5·535	5·335	8
$8\frac{1}{2}$	7·406	7·087	6·789	6·510	6·248	6·002	5·770	5·552	$8\frac{1}{2}$
9	7·786	7·435	7·108	6·802	6·515	6·247	5·995	5·759	9
$9\frac{1}{2}$	8·161	7·776	7·419	7·085	6·774	6·483	6·211	5·956	$9\frac{1}{2}$
10	8·530	8·111	7·722	7·360	7·024	6·710	6·418	6·145	10
$10\frac{1}{2}$	8·894	8·439	8·018	7·627	7·265	6·929	6·616	6·324	$10\frac{1}{2}$
11	9·253	8·760	8·306	7·887	7·499	7·139	6·805	6·495	11
$11\frac{1}{2}$	9·606	9·076	8·588	8·139	7·724	7·341	6·987	6·658	$11\frac{1}{2}$
12	9·954	9·385	8·863	8·384	7·943	7·536	7·161	6·814	12
$12\frac{1}{2}$	10·297	9·688	9·132	8·622	8·154	7·723	7·327	6·962	$12\frac{1}{2}$
13	10·635	9·986	9·394	8·853	8·358	7·904	7·487	7·103	13
$13\frac{1}{2}$	10·968	10·277	9·649	9·077	8·555	8·077	7·640	7·238	$13\frac{1}{2}$
14	11·296	10·553	9·899	9·295	8·745	8·244	7·786	7·367	14
$14\frac{1}{2}$	11·619	10·843	10·142	9·507	8·930	8·405	7·926	7·489	$14\frac{1}{2}$
15	11·938	11·118	10·380	9·712	9·108	8·559	8·061	7·606	15
$15\frac{1}{2}$	12·252	11·388	10·612	9·912	9·280	8·708	8·189	7·717	$15\frac{1}{2}$
16	12·561	11·652	10·838	10·106	9·447	8·851	8·313	7·824	16
$16\frac{1}{2}$	12·866	11·911	11·059	10·442	9·608	8·989	8·431	7·925	$16\frac{1}{2}$
17	13·166	12·166	11·274	10·477	9·763	9·122	8·544	8·022	17
$17\frac{1}{2}$	13·462	12·415	11·481	10·655	9·914	9·249	8·652	8·114	$17\frac{1}{2}$
18	13·754	12·659	11·690	10·828	10·059	9·372	8·756	8·201	18
$18\frac{1}{2}$	14·041	12·899	11·890	10·995	10·200	9·490	8·855	8·285	$18\frac{1}{2}$
19	14·324	13·134	12·085	11·158	10·336	9·604	8·950	8·365	19
$19\frac{1}{2}$	14·603	13·364	12·276	11·316	10·467	9·713	9·041	8·441	$19\frac{1}{2}$
20	14·877	13·590	12·462	11·470	10·591	9·818	9·129	8·514	20
$20\frac{1}{2}$	15·148	13·812	12·644	11·619	10·717	9·919	9·212	8·583	$20\frac{1}{2}$

TABLE—continued

Years.	YEARS' PURCHASE.								Years.
	3 per cent.	4 per cent.	5 per cent.	6 per cent.	7 per cent.	8 per cent.	9 per cent.	10 per cent.	
21	15.415	14.029	12.821	11.764	10.836	10.017	9.292	8.649	21
21½	15.678	14.242	12.994	11.905	10.950	10.111	9.369	8.712	21½
22	15.937	14.451	13.163	12.042	11.061	10.201	9.442	8.772	22
22½	16.192	14.656	13.328	12.174	11.168	10.288	9.513	8.829	22½
23	16.444	14.857	13.489	12.303	11.272	10.371	9.580	8.883	23
23½	16.691	15.054	13.645	12.429	11.372	10.451	9.645	8.935	23½
24	16.936	15.247	13.799	12.550	11.469	10.529	9.706	8.985	24
24½	17.176	15.436	13.948	12.669	11.563	10.603	9.766	9.032	24½
25	17.413	15.662	14.094	12.783	11.654	10.675	9.823	9.077	25
25½	17.647	15.804	14.236	12.895	11.741	10.744	9.877	9.120	25½
26	17.877	15.983	14.375	13.003	11.826	10.810	9.929	9.161	26
26½	18.104	16.158	14.511	13.108	11.908	10.874	9.979	9.200	26½
27	18.327	16.330	14.643	13.211	11.987	10.935	10.027	9.237	27
27½	18.547	16.498	14.772	13.310	12.063	10.994	10.072	9.273	27½
28	18.764	16.663	14.898	13.406	12.137	11.051	10.116	9.307	28
28½	18.978	16.825	15.021	13.500	12.209	11.106	10.158	9.339	28½
29	19.188	16.984	15.141	13.591	12.278	11.158	10.198	9.370	29
29½	19.396	17.139	15.258	13.679	12.344	11.209	10.237	9.399	29½
30	19.600	17.292	15.372	13.765	12.409	11.258	10.274	9.427	30
30½	19.802	17.442	15.484	13.848	12.471	11.305	10.309	9.454	30½
31	20.000	17.588	15.593	13.929	12.532	11.350	10.343	9.479	31
31½	20.196	17.732	15.699	14.008	12.590	11.393	10.375	9.503	31½
32	20.389	17.874	15.803	14.084	12.647	11.435	10.406	9.526	32
32½	20.579	18.012	15.904	14.158	12.701	11.475	10.436	9.548	32½
33	20.766	18.148	16.003	14.230	12.754	11.514	10.464	9.569	33
33½	20.950	18.281	16.099	14.300	12.805	11.551	10.492	9.589	33½
34	21.132	18.411	16.193	14.368	12.854	11.587	10.518	9.609	34
34½	21.311	18.539	16.285	14.434	12.902	11.621	10.543	9.627	34½
35	21.487	18.665	16.374	14.498	12.948	11.655	10.567	9.644	35
35½	21.661	18.788	16.462	14.561	12.992	11.686	10.590	9.661	35½
36	21.832	18.908	16.547	14.621	13.035	11.717	10.612	9.677	36
36½	22.001	19.027	16.630	14.680	13.077	11.747	10.633	9.692	36½
37	22.167	19.143	16.711	14.737	13.117	11.775	10.653	9.706	37
37½	22.331	19.256	16.791	14.792	13.156	11.803	10.672	9.720	37½
38	22.492	19.368	16.868	14.846	13.193	11.829	10.691	9.733	38
38½	22.652	19.477	16.943	14.898	13.230	11.854	10.709	9.745	38½
39	22.808	19.584	17.017	14.949	13.265	11.879	10.726	9.757	39
39½	22.963	19.690	17.089	14.998	13.299	11.902	10.742	9.768	39½
40	23.115	19.793	17.159	15.046	13.332	11.925	10.757	9.779	40
40½	23.265	19.894	17.228	15.093	13.363	11.946	10.772	9.789	40½
41	23.412	19.993	17.294	15.138	13.394	11.967	10.787	9.799	41

TABLE—continued

Years.	YEARS' PURCHASE.								Years.
	3 per cent.	4 per cent.	5 per cent.	6 per cent.	7 per cent.	8 per cent.	9 per cent.	10 per cent.	
41½	23-558	20-090	17-360	15-182	13-424	11-987	10-800	9-808	41½
42	23-701	20-186	17-423	15-225	13-452	12-007	10-813	9-817	42
42½	23-843	20-279	17-485	15-266	13-480	12-025	10-826	9-826	42½
43	23-982	20-371	17-546	15-306	13-507	12-043	10-838	9-834	43
43½	24-119	20-461	17-605	15-345	13-533	12-060	10-849	9-842	43½
44	24-254	20-549	17-663	15-383	13-558	12-077	10-861	9-849	44
44½	24-387	20-635	17-719	15-420	13-582	12-093	10-871	9-856	44½
45	24-519	20-720	17-774	15-456	13-606	12-108	10-881	9-863	45
45½	24-648	20-803	17-828	15-491	13-628	12-123	10-891	9-869	45½
46	24-775	20-885	17-880	15-524	13-650	12-137	10-900	9-875	46
46½	24-901	20-965	17-931	15-557	13-671	12-151	10-909	9-881	46½
47	25-025	21-043	17-981	15-589	13-692	12-164	10-918	9-887	47
47½	25-147	21-120	18-030	15-620	13-711	12-177	10-926	9-892	47½
48	25-267	21-195	18-077	15-650	13-730	12-189	10-934	9-897	48
48½	25-385	21-269	18-123	15-679	13-749	12-201	10-941	9-902	48½
49	25-502	21-341	18-169	15-708	13-767	12-212	10-948	9-906	49
49½	25-617	21-413	18-213	15-735	13-784	12-223	10-955	9-911	49½
50	25-730	21-482	18-256	15-762	13-801	12-233	10-962	9-915	50
51	25-951	21-617	18-339	15-813	13-832	12-253	10-974	9-921	51
52	26-166	21-748	18-418	15-861	13-862	12-272	10-985	9-930	52
53	26-375	21-873	18-493	15-907	13-890	12-288	10-996	9-936	53
54	26-578	21-993	18-565	15-950	13-916	12-304	11-005	9-942	54
55	26-774	22-109	18-633	15-991	13-940	12-319	11-014	9-947	55
56	26-965	22-220	18-699	16-029	13-963	12-332	11-022	9-952	56
57	27-151	22-327	18-761	16-065	13-984	12-344	11-029	9-956	57
58	27-331	22-430	18-820	16-099	14-003	12-356	11-036	9-960	58
59	27-506	22-528	18-876	16-131	14-022	12-367	11-042	9-964	59
60	27-676	22-623	18-929	16-161	14-039	12-377	11-048	9-967	60
65	28-453	23-047	19-161	16-289	14-110	12-416	11-070	9-980	65
70	29-123	23-395	19-343	16-385	14-160	12-443	11-084	9-987	70
75	29-702	23-680	19-485	16-456	14-196	12-461	11-094	9-992	75
80	30-201	23-915	19-596	16-509	14-222	12-474	11-100	9-995	80
85	30-631	24-109	19-684	16-549	14-240	12-482	11-104	9-997	85
90	31-002	24-267	19-752	16-579	14-253	12-488	11-106	9-998	90
95	31-323	24-398	19-806	16-601	14-263	12-492	11-108	9-999	95
100	31-599	24-505	19-848	16-618	14-269	12-494	11-109	9-999	100
Perp	33-333	25-000	20-000	16-667	14-286	12-500	11-111	10-000	Perp

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LEDGER ACCOUNT of a Seven Years' Lease purchased for £3,476 10s. From Date of Purchase to Expiration of the Lease.

(See Explanation of Table, Example 1, page 728.)

<i>Date.</i> Of Purchase.	To Cash " Interest at 6 per cent	<i>f.</i> 3,476 208	<i>s.</i> 11 11	<i>d.</i> 0 9	<i>Date.</i> End of 1st year.	By Revenue Account " Balance	<i>f.</i> 622 3,062	<i>s.</i> 16 5	<i>d.</i> 1 8
End of 2nd year.	To Balance " Interest		3,685	1 9	End of 2nd year.	By Revenue Account " Balance	3,685	1	9
End of 3rd year.	To Balance " Interest		3,062 183	5 8 14 8	End of 3rd year.	By Revenue Account " Balance	622 2,623	16 4	1 3
End of 4th year.	To Balance " Interest		3,246	0 4	End of 4th year.	By Revenue Account " Balance	3,246	0	4
End of 5th year.	To Balance " Interest		2,623 157	4 3 7 10	End of 5th year.	By Revenue Account " Balance	622 2,157	16 16	1 0
End of 6th year.	To Balance " Interest		2,780	12 1	End of 6th year.	By Revenue Account " Balance	2,780	12	1
End of 7th year.	To Balance " Interest		2,157 129	16 0 9 4	End of 7th year.	By Revenue Account " Balance	622 1,664	16 9	1 3
	To Balance " Interest		2,287	5 4	End of 7th year.	By Revenue Account " Balance	2,287	5	4
	To Balance " Interest		1,664 99	9 3 17 4	End of 7th year.	By Revenue Account " Balance	622 1,141	16 10	1 6
	To Balance " Interest		1,764	6 7	End of 7th year.	By Revenue Account " Balance	1,764	6	7
	To Balance " Interest		1,141 68	10 6 9 9	End of 7th year.	By Revenue Account " Balance	622 587	16 4	1 2
	To Balance " Interest		1,210	0 3	End of 7th year.	By Revenue Account " Balance	1,210	0	3
	To Balance " Interest		587 35	4 2 4 8	End of 7th year.	By Revenue Account " Balance	622		
	To Balance " Interest		622	8 10	End of 7th year.	By Revenue Account " Balance	622	8	10

COMPANIES (PARTICULARS AS TO DIRECTORS) ACT, 1917

[7 & 8 GEO. V, CH. 28.]

2nd August, 1917.

A.D. 1917.

1. In addition to the particulars with respect to the persons who are the directors, or occupy the position of directors, which by Section twenty-six of the Companies (Consolidation) Act, 1908, are required to be included in the annual summary, or, in the case of a company incorporated outside the United Kingdom which establishes a place of business within the United Kingdom, are, by Section two hundred and seventy-four of that Act, required to be included amongst the particulars to be filed with the Registrar of Companies, there shall be included such particulars with respect to those persons as would be required to be furnished with respect to them under the Registration of Business Names Act, 1916, if they were partners in a firm required to be registered under that Act, and the register required to be kept by a company under Section seventy-five of the Companies (Consolidation) Act, 1908, shall include such particulars as aforesaid, and the obligation of the company under that section, or in the case of a company incorporated outside the United Kingdom under Section two hundred and seventy-four of the said Act, from time to time to notify to the registrar any change among its directors shall include an obligation so to notify any change in any such particulars.

Obligation of companies to disclose particulars respecting directors.

8 Edw. VII, c. 69.

6 & 7 Geo. V, c. 58.

2.—(1) Every company which has been registered between the twenty-second day of November, nineteen hundred and sixteen, and the passing of this Act, and every company incorporated outside the United Kingdom which has before the passing of this Act established a place of business within the United Kingdom, shall, within one month after the passing of this Act, and every company registered after the passing of this Act shall, within one month of the registration of the company, send to the Registrar of Companies, in such form as may be prescribed by the Board of Trade, such particulars respecting the directors of the company and, except in the case of a company incorporated outside the United Kingdom, respecting the persons who since the registration of the company have been directors of the company, as would be required to be furnished with respect to them under the Registration of Business Names Act, 1916, if they were partners in a firm required to be registered under that Act, and if default is made in compliance with this section, the company shall be liable on summary conviction to a fine not exceeding five pounds for every day during which the default continues, and every director, secretary, and officer of the company who is knowingly a party to the default shall be guilty of a like offence and liable to a like penalty.

Additional obligations of companies.

(2) Sections eighteen and nineteen of the Registration of Business Names Act, 1916, with respect to the publication in trade catalogues, trade circulars, show cards, and business letters of certain particulars, shall after the expiration of three months from the passing of this Act apply to every company which since the said twenty-second day of November, nineteen hundred and sixteen, has been registered or, in the case of a company incorporated outside the United Kingdom which has since the said twenty-second day of November, nineteen hundred and sixteen, established a place of business within the United Kingdom, or which may after the passing of this Act be registered or establish a place of business within the United Kingdom, as if the directors of the company were partners in a firm required to be registered under the first-mentioned Act:

Provided that if special circumstances exist which render it, in the opinion of the Board, expedient that such an exemption should be granted, the Board

A.D. 1917.

Meaning of
director.

of Trade may by order grant, subject to such conditions as may be specified in the order, exemption from the obligations imposed by this sub-section.

3. For the purposes of this Act and of Sections twenty-six, seventy-five, and two hundred and seventy-four of the Companies (Consolidation) Act, 1908, as amended by this Act, the expression "director" shall include any person who occupies the position of a director and any person in accordance with whose directions or instructions the directors of a company are accustomed to act.

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